

MONTANA LEGISLATIVE HISTORY

Chapter 575 19 99

Bill H _____ S 406

Original bill & history ☒ c

H. Committee on Appropriation

S. Committee on Business & Ind.

Hearing Date(s) 3/26 _____ c

Hearing Date(s) 2/17 _____ c

3/29 _____ c

2/26/9 _____ c

_____ c

_____ c

_____ c

_____ c

Date Out _____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

S. Free Conference 4/14

H. Free Conference 4/14

S. Free Conference 4/17

Reports 1, 2 & 3 4/20

H. Free Conference 4/16

Hearings were held but no minutes
reports 1(?) and 3 in Senate Journal

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

2/18 Tabled in Committee
 3/01 Missed Deadline for General Bill Transmittal

SB 406 Introduced by Doherty, et al.

LC1014 Drafter: Everts

Authorize the Formation of Buying Cooperatives to Purchase Electricity for Residential and Small Commercial Customers in Investor-owned Distribution Utility Service Territories in Which Those Customers Can Choose an Electricity Supplier;...

2/08	Introduced and 1st Reading		
2/08	Referred to Business and Industry		
2/08	Fiscal Note Requested		
2/11	Fiscal Note Received		
2/12	Fiscal Note Signed		
2/13	Fiscal Note Printed		
2/17	Hearing		
2/20	Committee Executive Action--Bill Passed as Amended	7	0
2/20	Committee Report--Bill Passed as Amended		
2/23	2nd Reading Passed	49	0
2/24	3rd Reading Passed	49	0
	Transmitted to House		
3/02	Referred to Appropriations		
3/26	Hearing		
3/29	Committee Executive Action--Bill Concurred as Amended	15	0
3/30	Committee Report--Bill Concurred as Amended		
4/07	2nd Reading Concurred	84	14
4/08	3rd Reading Concurred	87	12
	Returned to Senate with Amendments		
4/12	2nd Reading House Amendments Not Concurred	49	0
4/13	Free Conference Committee Appointed		
4/14	Hearing		
4/14	Free Conference Committee Report Received		
4/15	2nd Reading Free Conference Committee Report Adopted	48	0
4/16	Taken From 3rd Reading and Rereferred to Committee		
4/16	Free Conference Committee Dissolved		
	House		
4/13	Free Conference Committee Appointed		
4/14	Free Conference Committee Report Received		
4/16	Free Conference Committee Dissolved		
	Senate		
4/16	Free Conference Committee Appointed		
4/17	Hearing		
4/19	Free Conference Committee Appointed		
4/19	Free Conference Committee Report No. 2 Received		
4/19	2nd Reading Free Conference Committee Report No. 2 Adopted	50	0
4/20	Reconsidered action to Adopt Free Conference Committee Reports No. 1 and No. 2	49	0
4/20	Free Conference Committee Report No. 3 Received		
4/20	2nd Reading Free Conference Committee Report No. 3 Adopted	48	1
4/21	3rd Reading Free Conference Committee Report No. 3 Adopted	50	0

	House		
4/16	Free Conference Committee Appointed		
4/19	Free Conference Committee Report No. 2 Received		
4/20	Free Conference Committee Report No. 3 Received		
4/21	2nd Reading Free Conference Committee Report No. 3		
	Adopted	94	2
4/21	3rd Reading Free Conference Committee Report No. 3		
	Adopted	96	2
4/21	Sent to Enrolling		
4/28	Returned from Enrolling		
4/27	Signed by President		
4/29	Signed by Speaker		
4/30	Transmitted to Governor		
5/05	Signed by Governor		
5/07	Chapter Number Assigned		
	Chapter Number 575		
	Effective Date: 5/05/1999 - All Sections		

SB 407 Introduced by Cocchiarella, et al. *LC1364 Drafter: Vandenbosch*

Allocate a Portion of the Proceeds from the Lodging Facility Use Tax to the Department of Commerce for Grants to Local Governments to Develop and Implement Growth Policies;...

2/08	Introduced and 1st Reading
2/08	Referred to Taxation
2/08	Fiscal Note Requested
2/12	Fiscal Note Received
2/13	Fiscal Note Printed
2/16	Hearing
3/10	Tabled in Committee
3/31	Missed Deadline for Revenue Bill Transmittal

SB 408 Introduced by Ellingson, et al. *LC0441 Drafter: Everts*

Require That the Public Service Commission Continue to Regulate Electricity Supply for Small Customers If Workable Competition Does Not Exist;...

11/04	Fiscal Note Needed
2/08	Introduced and 1st Reading
2/08	Referred to Business and Industry
2/08	Fiscal Note Requested
2/12	Fiscal Note Received
2/12	Fiscal Note Signed
2/13	Fiscal Note Printed
2/16	Hearing
2/19	Tabled in Committee
3/01	Missed Deadline for General Bill Transmittal

SB 409 Introduced by Ellingson, et al. *LC1058 Drafter: Everts*

Authorize Net Metering for Certain Energy Systems;...

2/08	Introduced and 1st Reading
2/08	Referred to Business and Industry
2/08	Fiscal Note Requested
2/10	Hearing

Scribe BILL NO. 406

1

2 INTRODUCED BY

Donerty
(Primary Sponsor)

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE FORMATION OF BUYING COOPERATIVES
5 TO PURCHASE ELECTRICITY FOR RESIDENTIAL AND SMALL BUSINESS CUSTOMERS IN
6 INVESTOR-OWNED DISTRIBUTION UTILITY SERVICE TERRITORIES IN WHICH THOSE CUSTOMERS CAN
7 CHOOSE AN ELECTRICITY SUPPLIER; AUTHORIZING THE PUBLIC SERVICE COMMISSION TO DESIGNATE
8 A DEFAULT SUPPLIER FOR ELECTRICITY WITHIN AN INVESTOR-OWNED DISTRIBUTION UTILITY'S
9 SERVICE TERRITORY; AMENDING SECTIONS 69-8-103, 69-8-203, 69-8-210, AND 69-8-403, MCA; AND
10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

11

12 WHEREAS, residential and small business customers of investor-owned distribution utilities in
13 Montana need access to reliable electricity supply at just and reasonable prices; and

14 WHEREAS, competitive retail markets for providing electricity supply to those customers in
15 Montana have not yet developed; and

16 WHEREAS, evidence from other states that have preceded Montana into a restructured electricity
17 supply market indicates that meaningful retail competition for those customers may not develop for a
18 significant period of time; and

19 WHEREAS, the aggregation of residential and small business customers that do not have access
20 to competitive electricity suppliers at just and reasonable prices provides them with market power to
21 secure electricity at the least cost; and

22 WHEREAS, allowing one entity to aggregate residential and small business customers to purchase
23 electricity maximizes economies of scale, increases administrative efficiency, and provides maximum
24 benefits to all small electricity customers; and

25 WHEREAS, wholesale competition in electricity markets may be facilitated by allowing entities
26 to compete for the opportunity to provide electricity supply to those residential and small business
27 customers on an aggregated basis; and

28 WHEREAS, wholesale competition is consistent with the intent of Montana's electricity
29 restructuring act and provides for economic development within the state; and

30 WHEREAS, the formation of nonprofit electricity buying cooperatives enhances the chances of

1 securing for small customers the greatest amount of electricity at the least cost from the federal power
2 system; and

3 WHEREAS, the state of Montana benefits by enacting legislation this session that maximizes the
4 chances of an electricity buying cooperative being able to purchase power for small customers from the
5 Bonneville Power Administration at preferential rates for the subscription period that begins in 2001.

6

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8

9 NEW SECTION. Section 1. Short title. [Sections 1 through 32] may be cited as the "Electricity
10 Buying Cooperative Act."

11

12 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 32], unless the context
13 requires otherwise, the following definitions apply:

14 (1) "Distribution utility" means the electricity distribution portion of a public utility as defined in
15 69-8-103.

16 (2) "Residential customer" means a residential customer of a distribution utility.

17 (3) "Small business customer" means for a distribution utility, the accounts of a commercial
18 customer whose aggregated load is a monthly peak of 100 kilowatts or less.

19 (4) "Small customer" means a residential customer or small business customer of a distribution
20 utility.

21

22 NEW SECTION. Section 3. Exemption from jurisdiction of public service commission. Except
23 when licensed as the default supplier for a distribution utility, as provided in [section 36], or when licensed
24 as an electricity supplier pursuant to 69-8-404, a buying cooperative transacting business in this state
25 pursuant to [sections 1 through 32] is exempt in all respects from the jurisdiction and control of the public
26 service commission.

27

28 NEW SECTION. Section 4. Permissible purpose of incorporation. A buying cooperative may be
29 organized under this chapter for the purpose of supplying electricity to residential customers and small
30 business customers of a distribution utility.

NEW SECTION. Section 5. Powers of buying cooperative. A buying cooperative may:

- (1) sue and be sued in its corporate name;
- (2) have perpetual existence;
- (3) adopt a corporate seal and alter the seal at pleasure;
- (4) become a member in one or more other buying cooperatives;
- (5) own, possess, and enjoy as much real and personal property as is necessary for the transaction of its business and sell and dispose of the property;
- (6) borrow money, or otherwise contract indebtedness, and pledge its property, both real and personal, to secure the payment of the borrowed money or contract for debt;
- (7) enter into contracts and other obligations for the purchase and sale of electricity to its members;
- (8) sell or otherwise dispose of electricity on the wholesale market not consumed by its members;
- (9) conduct its business and exercise all of its powers within or outside of this state;
- (10) adopt, amend, and repeal bylaws; and
- (11) except as prohibited in [section 6], do and perform all other acts and things and have and exercise all other powers that may be necessary, convenient, or appropriate to accomplish the purpose for which the buying cooperative is organized.

NEW SECTION. Section 6. Restrictions on powers of buying cooperative. Notwithstanding any other provision of this chapter, a buying cooperative may not:

- (1) construct, purchase, take, receive, lease, or otherwise acquire or own, hold, equip, maintain, or operate electric generating plants or transmission or distribution lines or systems;
- (2) purchase electricity for or sell electricity to commercial or industrial electric consumers having accounts possessing an aggregated monthly peak greater than 100 kilowatts; or
- (3) offer for sale any products other than electricity supply.

NEW SECTION. Section 7. Waiver of notice. (1) If [sections 1 through 32] or the buying cooperative's articles of incorporation or bylaws require that notice be given, a person may waive the notice if the waiver is in writing and signed by the person entitled to the notice whether before or after

1 the time fixed for the giving of the notice.

2 (2) If a person entitled to notice of a meeting attends the meeting, the person's attendance
3 constitutes a waiver of notice of the meeting, except in the case when the person attends the meeting
4 for the express purpose of objecting to the transaction of any business because the meeting was not
5 lawfully called or convened.

6

7 NEW SECTION. **Section 8. Name.** (1) The name of each buying cooperative must include the
8 phrase "electricity buying cooperative" and the abbreviation "inc."

9 (2) The name of a buying cooperative must distinguish it from the name of another corporation
10 organized under the laws authorized to transact business in this state.

11 (3) The phrase "electricity buying cooperative" may not be used in the name of any corporation
12 organized under the laws of or authorized to transact business in this state, except a buying cooperative
13 transacting business in this state pursuant to [sections 1 through 32].

14

15 NEW SECTION. **Section 9. Incorporators.** Five or more individuals or two or more buying
16 cooperatives may organize a buying cooperative, as provided in [sections 1 through 32].

17

18 NEW SECTION. **Section 10. Articles of incorporation.** (1) The articles of incorporation of a buying
19 cooperative must state in the caption that the articles of incorporation are executed pursuant to [sections
20 1 through 32], must be signed by each of the incorporators, and must state:

21 (a) the name of the cooperative;

22 (b) the address of its principal office;

23 (c) the names and addresses of the incorporators;

24 (d) the names and addresses of the persons who constitute its first board of trustees; and

25 (e) any provisions not inconsistent with [sections 1 through 32] considered necessary or advisable
26 for the conduct of its business and affairs.

27 (2) In addition to provisions required in subsection (1), the articles of incorporation may also
28 contain:

29 (a) provisions, not inconsistent with law, eliminating or limiting liability as provided in [sections
30 1 through 32];

1 (b) provisions for classifications of members in a buying cooperative; and

2 (c) provisions for issuance of nonvoting stock.

3 (3) A buying cooperative's articles of incorporation must be submitted to the secretary of state
4 for filing, as provided in [section 31].

5 (4) It is not necessary to include in the articles of incorporation of a buying cooperative the
6 purpose for which it is organized or any of the corporate powers vested in a buying cooperative under
7 [sections 1 through 32].

8
9 **NEW SECTION. Section 11. Amendment of articles of incorporation.** A buying cooperative may
10 amend its articles of incorporation by complying with the following requirements:

11 (1) The proposed amendment must first be:

12 (a) approved by the board of trustees and then be submitted to a vote of the members at any
13 annual or special meeting of the membership; or

14 (b) submitted by a petition bearing not less than 20% of the members' signatures, in accordance
15 with the same procedures as those provided for member initiatives provided in [section 17].

16 (2) The notice of the meeting on the proposed amendment must be included in the proposed
17 amendment. The proposed amendment, with the changes that the members choose to make to the
18 amendment, is considered to be approved on the affirmative vote of not less than two-thirds of those
19 members voting on the amendment at the meeting.

20 (3) Upon an approval of the amendment by the members, the articles of amendment must be
21 executed on behalf of the buying cooperative by its president or vice president and its corporate seal must
22 be affixed to the articles of amendment and attested by its secretary. The articles of amendment must
23 include in the caption that the articles of amendment are executed pursuant to [sections 1 through 32]
24 and must state:

25 (a) the name of the buying cooperative;

26 (b) the address of its principal office;

27 (c) the date of the filing of its articles of incorporation in the office of the secretary of state; and

28 (d) the amendment to its articles of incorporation.

29 (4) The president or vice president executing the articles of amendment shall also make and
30 attach to the articles of amendment an affidavit stating that the provisions of this section were met.

(5) The articles of amendment and the affidavit must be submitted to the secretary of state for filing, as provided in [section 31].

NEW SECTION. Section 12. Change of principal office without amendment. A buying cooperative may, without amending its articles of incorporation, upon authorization of its board of trustees, change the location of its principal office. The buying cooperative shall file a certificate of change of principal office executed by its president or vice president, under its seal attested by its secretary, with the secretary of state's office. The buying cooperative shall also file a certificate of change of principal office in each county office in which the buying cooperative's articles of incorporation or any prior certificate of change of principal office of the buying cooperative has been filed. The buying cooperative shall pay the change in location of principal office fee prescribed in [section 31]. The buying cooperative shall also, within 30 days after the filing of the certificate of change of principal office in any county office, file certified copies of its articles of incorporation and all article of incorporation amendments if not already on file in the county office.

NEW SECTION. Section 13. Bylaws. The original bylaws of a buying cooperative must be adopted by its board of trustees. After adoption by the board of trustees, the bylaws may be adopted, amended, or repealed by its members or, except as authorized in a bylaw, by its board of trustees. A bylaw may not prevent the members from reassuring sole power to amend bylaws or prevent members from otherwise adopting, amending, or repealing bylaws. The bylaws must include the rights and duties of members and trustees and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with [sections 1 through 32] or with the articles of incorporation.

NEW SECTION. Section 14. Membership. (1) Membership in a buying cooperative is restricted to residential customers and small business customers of a distribution utility, and to other buying cooperatives.

(2) A member may join a buying cooperative by the methods prescribed in the buying cooperative's bylaws, or may be assigned to a buying cooperative by the public service commission upon approval of a default supplier license, as provided in [section 36].

1
2 **NEW SECTION.** **Section 15. Nonliability of members, trustees, and officers.** (1) The private
3 property of the members of a buying cooperative is exempt from execution for the debts of the buying
4 cooperative, and a member may not be liable or responsible for any debts of the buying cooperative.

5 (2) A trustee or officer of a buying cooperative or acting for a buying cooperative is not personally
6 liable to the buying cooperative or its members for any actions taken or any failure to take any action as
7 a trustee or officer unless:

8 (a) the trustee or officer fails to perform the trustee's or officer's responsibilities or duties,
9 including those in compliance with [sections 18 and 19]; and

10 (b) the failure to perform constitutes willful misconduct or recklessness.
11

12 **NEW SECTION.** **Section 16. Meetings of members.** (1) An annual meeting of the members must
13 be held at a time that must be provided in the bylaws.

14 (2) Special meetings of the members may be called by the board of trustees, by any three
15 trustees, by not less than 20% of the members, or by the president.

16 (3) Meetings of members must be held at a place designated in the bylaws. In the absence of a
17 provision in the bylaws that designates a meeting place, all meetings must be held at a place determined
18 by the board of trustees.

19 (4) Except as otherwise provided, written or printed notice stating the time and place of each
20 meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting
21 is called must be given to each member, either personally or by mail, not less than 10 or more than 25
22 days before the date of the meeting.

23 (5) Five percent of all members present in person or 50 members present in person, whichever
24 is fewer, constitute a quorum for the transaction of business at all meetings of the members, but the
25 bylaws may prescribe the presence of a greater percentage or number of the members for a quorum. If
26 less than a quorum is present at a meeting, a majority of those present in person may adjourn the meeting
27 from time to time without further notice.

28 (6) Each member is entitled to one vote on each matter submitted to a vote at a meeting. Voting
29 must be in person but, if the bylaws allow, voting may also be by proxy or by mail, or both or if the
30 bylaws allow, by the method provided in [section 20]. If the bylaws provide for voting by proxy or by mail,

1 the bylaws must also prescribe the conditions under which proxy or mail voting or both are to be
2 exercised. In any event, a person may not vote as a proxy for more than three members at a meeting of
3 the members.

4

5 NEW SECTION. **Section 17. Initiative by members -- approval of trustees not required.** (1)
6 Notwithstanding any other provision of [sections 1 through 32], there must be submitted to the members
7 of a buying cooperative any proposition embodied in a petition signed by not less than 20% of its
8 members, together with any document submitted with the petition to give the effect to the proposition,
9 either at a special meeting of the members held within 45 days after the presentation of the petition or,
10 if the date of the next annual meeting of members falls within 90 days after the presentation or if the
11 petition specifically requests, at the annual meeting.

12 (2) The approval of the board of trustees is not required for any proposition or document
13 submitted to the members pursuant to this section and approved by them, but any proposition or
14 document is subject to all other applicable provisions of [sections 1 through 32]. The affidavit or affidavits
15 required to be filed with this proposition or document pursuant to applicable provisions of [sections 1
16 through 32] must be modified to be in compliance with the provisions of this section.

17

18 NEW SECTION. **Section 18. Board of trustees -- number -- qualifications -- removal --**
19 **compensation -- joint memberships.** (1) The business and affairs of a buying cooperative must be managed
20 by or under the direction of a board of not less than five trustees, each of whom must be a member of
21 the buying cooperative or of another buying cooperative that is a member of the buying cooperative. The
22 bylaws must prescribe the number of trustees, their qualifications, other than those provided for in
23 [sections 1 through 32], the manner of holding meetings of the board of trustees and of the election of
24 successors to trustees who resign, die, or are otherwise incapable of acting. The bylaws may also provide
25 for the removal of trustees from office and for the election of their successors.

26 (2) Without approval of the membership, trustees:

27 (a) may not receive any salaries for their services as trustees, except trustees may receive the
28 same insurance coverage provided to buying cooperative employees; and

29 (b) except in emergencies, may not be employed by the buying cooperative in a capacity involving
30 compensation.

1 (3) The bylaws may provide that the board of trustees may establish a fixed sum, including
2 expenses of attendance, if any, to be allowed for:

3 (a) attendance at each meeting of the board of trustees or any committee of the board of
4 trustees; or

5 (b) representing the buying cooperative at a meeting or on business whenever representation has
6 been approved by the board.

7 (4) If two or more persons hold a joint membership in a buying cooperative, one person, but not
8 more than one person, from a joint membership may be elected a trustee.

9 (5) The policies of the buying cooperative may provide that benefits provided to employees may
10 be extended to trustees.

11

12 **NEW SECTION.** **Section 19. Trustees -- term -- quorum -- powers.** (1) The trustees of a buying
13 cooperative named in articles of incorporation, consolidation, merger, or conversion shall hold office until
14 the next following annual meeting of the members or until their successors have been elected and
15 qualified. At each annual meeting or, in case of failure to hold the annual meeting as specified in the
16 bylaws, at a special meeting called for that purpose, the members shall elect trustees who may serve for
17 1-, 2-, or 3-year terms. Each trustee shall hold office for the term for which that trustee is elected or until
18 the trustee's successor has been elected and qualified.

19 (2) A majority of the board of trustees constitutes a quorum.

20 (3) The board of trustees may exercise all of the powers of a buying cooperative, except those
21 powers that are conferred upon the members by [sections 1 through 32] or by its articles of incorporation
22 or bylaws.

23

24 **NEW SECTION.** **Section 20. Voting districts.** (1) Notwithstanding any other provisions of
25 [sections 1 through 32], the bylaws may provide that the territory or geographic area in which a buying
26 cooperative operates to serve its members, or a class or classes of members, must be divided into two
27 or more voting districts and that in respect to each voting district:

28 (a) the members or the members of a membership class or classes residing in the voting district
29 shall elect a designated number of trustees;

30 (b) the members or the members of a membership class or classes residing in the voting district

1 shall elect a designated number of delegates; or

2 (c) the members or the members of a membership class or classes shall elect both trustees and
3 delegates.

4 (2) This section does not restrict or prohibit a buying cooperative from using a combination of
5 voting districts based on members or classes of members with a territory or geographical area or voting
6 districts at large based on members or classes of members using one or more kinds of services or
7 products provided by the buying cooperative.

8 (3) The bylaws must prescribe the manner in which the voting districts and the members or
9 membership classes of those voting districts and the delegates and trustees, if any, elected from those
10 voting districts shall function and the powers of the delegates, which may include the power to elect
11 trustees and adopt, amend, or repeal the bylaws of a buying cooperative as provided in [sections 1
12 through 32].

13 (4) A member at a voting district meeting and a delegate at a meeting may not vote by proxy or
14 by mail.

15

16 NEW SECTION. **Section 21. Officers.** The officers of a buying cooperative consist of a president,
17 vice president, secretary, and treasurer who are elected annually by and from the board of trustees. A
18 person may not continue to hold any of the above offices after that person has ceased to be a trustee.
19 The offices of secretary and of treasurer may be held by the same person. The board of trustees may also
20 elect or appoint other buying cooperative officers, agents, or employees that it considers necessary or
21 advisable and shall prescribe the powers and duties of those other officers, agents, or employees. An
22 officer may be removed from office and a successor elected in the manner prescribed in the bylaws.

23

24 NEW SECTION. **Section 22. Authority to take acknowledgments.** A person who is authorized to
25 take acknowledgments under the laws of this state may not be disqualified from taking acknowledgments
26 of instruments executed in favor of a buying cooperative or to which it is a party by reason of being an
27 officer, trustee, director, or member of the buying cooperative.

28

29 NEW SECTION. **Section 23. Refunds to members -- retention of unclaimed refunds.** (1) Revenue
30 of a buying cooperative for any fiscal year must, unless otherwise determined by a vote of the members,

1 be distributed by the buying cooperative to its members as patronage refunds, prorated in accordance
2 with the patronage of the buying cooperative by the respective members paid for during the fiscal year,
3 whenever the revenue exceeds the amount necessary to:

4 (a) defray expenses of the buying cooperative and of the operation and maintenance of its
5 facilities during the fiscal year;

6 (b) pay interest and principal obligations of the buying cooperative coming due in the fiscal year;

7 (c) finance or provide a reserve for the financing of the construction or acquisition by the buying
8 cooperative of additional facilities to the extent determined by the board of trustees;

9 (d) provide a reasonable reserve for working capital;

10 (e) provide a reserve for the payment of indebtedness of the buying cooperative maturing more
11 than 1 year after the date of the incurrence of the indebtedness in an amount not less than the total of
12 the interest and principal payments required to be made during the next fiscal year; and

13 (f) provide a fund that may not be less than 2% or more than 5% of the balance remaining, for
14 education in cooperation and for the dissemination of information concerning the effective use of electric
15 energy and other services made available by the buying cooperative.

16 (2) This section may not be construed to prohibit the payment by a buying cooperative of all or
17 any part of its indebtedness prior to the date when the payment becomes due.

18 (3) A buying cooperative shall, upon the action of the board of trustees, retain redeemed
19 patronage refunds that are allocated to its members and that remain unclaimed for a period of 5 years
20 after the end of the year in which the refunds are given. Unclaimed redeemed patronage refunds retained
21 by the buying cooperative must be used for educational purposes.

22

23 **NEW SECTION.** **Section 24. Disposition or encumbrance of property.** (1) Except as provided in
24 subsection (2), or other than as arises relating to the issuance of stock or for any sale, mortgage, lease,
25 transfer, or other disposition or encumbrance of property to any entity owned or controlled by the buying
26 cooperative or in which the buying cooperative holds a majority interest or for any disposition or
27 encumbrance arising from or in connection with the issuance of shares of stock, if any is authorized, a
28 buying cooperative may not sell, mortgage, lease, or otherwise dispose of or encumber all or any
29 substantial portion of its property unless the sale, mortgage, lease, or other disposition or encumbrance
30 is authorized at a duly held meeting of members of the buying cooperative by an affirmative vote of not

1 less than two-thirds of all the members of the buying cooperative and unless the notice of the proposed
2 sale, mortgage, lease, or other disposition or encumbrance is contained in the notice of the meeting.

3 (2) The board of trustees of a buying cooperative, without authorization by the members of the
4 buying cooperative, has the full power and authority to authorize the execution and delivery of a mortgage
5 or mortgages or a deed or deeds of trust upon or the pledging or encumbrancing of any or all of the
6 property, assets, rights, privileges, licenses, franchises, and permits of the buying cooperative, whether
7 acquired or to be acquired and wherever situated, as well as the revenue and income from the property,
8 assets, rights, privileges, licenses, franchises, and permits of the buying cooperative, all upon the terms
9 and conditions that the board of trustees determines, to secure any indebtedness of the buying
10 cooperative or any entity owned or controlled by the buying cooperative or in which the buying
11 cooperative owns a majority interest to the United States or any instrumentality or agency of the United
12 States or to any other financing sources within the United States.

13 (3) Before a meeting is held to vote on authorization of disposition of buying cooperative property
14 as provided in subsection (1), the board of trustees shall:

15 (a) have the property appraised by three appraisers chosen by the board and not associated with
16 the buying cooperative or a proposed buyer of buying cooperative property;

17 (b) notify all buying cooperative members, at least 90 days in advance, of a meeting to vote on
18 disposition of buying cooperative property. Detailed proposals for disposition of the property must
19 accompany the notice.

20 (c) at least 30 days before the meeting, notify all other buying cooperatives situated and
21 operating in the state that the property is available for disposition and include with the notice one copy
22 of each appraisal on the buying cooperative property; and

23 (d) at least 30 days before the meeting, mail to all members any alternative proposal made by
24 buying cooperative members if it has been submitted to the board and signed by 50 or more members.

25 (4) The vote on property disposition may take place at an annual meeting if the board notifies the
26 members as provided in this section.

27 (5) This section does not apply to the transfer of buying cooperative property in a merger or
28 consolidation of buying cooperatives.

29
30 NEW SECTION. Section 25. Long-term indebtedness -- membership approval. Before a buying

1 cooperative may create or enter into an agreement that results in any direct or indirect obligation for the
2 repayment of long-term bonded indebtedness for financing directly or indirectly the construction,
3 maintenance, or operation of nuclear power generating facilities that may result in a rate increase to the
4 buying cooperative's members for repayment of the obligation, the buying cooperative must receive
5 approval from a majority of those members present and voting at the meeting. The approval must be
6 obtained at a special meeting held for that purpose.

7

8 NEW SECTION. Section 26. Procedure for merger. One or more buying cooperatives, each
9 designated a "merging buying cooperative", may merge into another surviving buying cooperative by
10 complying with the following requirements:

11 (1) In order for a merger and the proposed articles of merger to be valid, the board of trustees of
12 each merging buying cooperative and the board of trustees of the surviving buying cooperative shall first
13 approve the merger. The proposed articles of merger must state in the caption that they are executed
14 pursuant to [sections 1 through 32] and must state:

15 (a) the name of each merging buying cooperative, the address of its principal office, and the date
16 of the filing of its articles of incorporation in the office of the secretary of state;

17 (b) the name of the surviving buying cooperative and the address of its principal office;

18 (c) a statement that the merging buying cooperatives elect to be merged into the surviving buying
19 cooperative;

20 (d) the terms and conditions of the merger and the mode of carrying the merger into effect,
21 including the manner and basis of converting the memberships in the merging buying cooperative or
22 cooperatives into memberships in the surviving buying cooperative and the issuance of certificates of
23 membership in respect of the converted memberships; and

24 (e) any provisions not inconsistent with [sections 1 through 32] considered necessary or advisable
25 for the conduct of the business and affairs of the surviving buying cooperative.

26 (2) The proposition for the merger of the merging buying cooperatives into the surviving buying
27 cooperative and the proposed articles of merger approved by the board of trustees of the respective
28 buying cooperatives that are parties to the proposed merger must be submitted to a vote of the members
29 of each buying cooperative at any annual or special meeting of the buying cooperative. The meeting
30 notice must include the full particulars concerning the proposed merger. The proposed merger and the

1 proposed articles of merger are considered to be approved upon the affirmative vote of not less than
2 two-thirds of those members of each buying cooperative voting on the merger at the meeting.

3 (3) Upon approval of the merger by the members of the respective buying cooperatives parties
4 to the proposed merger, articles of merger in the form approved must be executed on behalf of each
5 buying cooperative by its president or vice president and the buying cooperative's seal must be affixed
6 to the articles of merger and attested by the buying cooperative's secretary. The president or vice
7 president of each buying cooperative executing the articles of merger shall also make and annex to the
8 articles of merger, an affidavit stating that the provisions of this section were duly complied with by the
9 buying cooperative.

10 (4) The articles of merger and affidavits must be submitted to the secretary of state for filing as
11 provided in [sections 1 through 32].

12

13 NEW SECTION. **Section 27. Procedure for consolidation.** Two or more buying cooperatives
14 designated a "consolidating buying cooperative", may consolidate into a new buying cooperative by
15 complying with the following requirements:

16 (1) In order for a consolidation and the proposed articles of consolidation to be valid, the board
17 of trustees of each consolidating buying cooperative and the board of trustees of the new buying
18 cooperative shall first approve the consolidation. The proposed articles of consolidation must state in the
19 caption that they are executed pursuant to [sections 1 through 32] and must state:

20 (a) the name of each consolidating buying cooperative, the address of its principal office, and the
21 date of the filing of its articles of incorporation in the office of the secretary of state;

22 (b) the name of the new buying cooperative and the address of its principal office;

23 (c) the names and addresses of the persons who constitute the first board of trustees of the new
24 buying cooperative;

25 (d) the terms and conditions of the consolidation and the mode of carrying the consolidation into
26 effect, including the manner and basis of converting memberships in each consolidating buying
27 cooperative into memberships in the new buying cooperative and the issuance of certificates of
28 memberships in respect of those converted memberships; and

29 (e) any provisions not inconsistent with [sections 1 through 32] considered necessary or advisable
30 for the conduct of the business and affairs of the new buying cooperative.

1 (2) The proposition for the consolidation of the consolidating buying cooperatives into the new
2 buying cooperative and the proposed articles of consolidation approved by the board of trustees of each
3 consolidating buying cooperative must be submitted to a vote of the members of each buying cooperative
4 at any annual or special meeting of the buying cooperative. The meeting notice must include the full
5 particulars concerning the proposed consolidation. The proposed consolidation and the proposed articles
6 of consolidation are considered to be approved upon the affirmative vote of not less than two-thirds of
7 those members of each consolidating buying cooperative voting on the proposed consolidation at the
8 meeting.

9 (3) Upon approval of the consolidation by the members of the respective consolidating buying
10 cooperatives, articles of consolidation in the form approved must be executed on behalf of each
11 consolidating buying cooperative by its president or vice president and the buying cooperative's seal must
12 be affixed to the articles of consolidation and attested by the buying cooperative's secretary. The
13 president or vice president of each consolidating buying cooperative executing the articles of consolidation
14 shall also make and annex to the articles of consolidation an affidavit stating that the provisions of this
15 section were duly complied with by the buying cooperative.

16 (4) The articles of consolidation and affidavits must be submitted to the secretary of state for
17 filing, as provided in [sections 1 through 32].
18

19 NEW SECTION. Section 28. Effect of merger or consolidation. The effect of consolidation or
20 merger must be as follows:

21 (1) The several buying cooperatives that are party to the consolidation or merger must be a single
22 buying cooperative which, in the case of a consolidation, must be the new buying cooperative provided
23 for in the articles of consolidation and, in the case of a merger, must be that buying cooperative
24 designated in the articles of merger as the surviving buying cooperative, and the separate existence of
25 all buying cooperatives that are party to the consolidation or merger, except the new or surviving buying
26 cooperative, shall cease.

27 (2) (a) The new or surviving buying cooperative has all the rights, privileges, immunities, and
28 powers and is subject to all the duties and liabilities of a buying cooperative organized under the provisions
29 of [sections 1 through 32] and possesses:

30 (i) the rights, privileges, and immunities;

- 1 (ii) franchises, of a public as well as of a private nature;
2 (iii) property, real and personal;
3 (iv) applications for membership;
4 (v) debts due on whatever account; and
5 (vi) all other choses in action of each of the consolidating or merging buying cooperatives.

6 (b) Each interest of or belonging or due to each of the buying cooperatives that are consolidated
7 or merged must be taken and considered to be transferred to and vested in the new or surviving buying
8 cooperative without further act or deed, and the title to any real estate or any interest in the real estate
9 under the laws of this state vested in a buying cooperative may not revert or be in any way impaired by
10 reason of the consolidation or merger.

11 (3) The new or surviving buying cooperative is responsible and liable for all of the liabilities and
12 obligations of each of the buying cooperatives consolidated or merged. Any claim existing or action or
13 proceeding pending by or against any of the buying cooperatives may be prosecuted as if the
14 consolidation or merger had not taken place, but the new or surviving buying cooperative may be
15 substituted in its place.

16 (4) The rights of creditors or any liens upon the property of consolidated or merged buying
17 cooperatives may not be impaired by a consolidation or merger.

18 (5) In the case of a consolidation, the articles of consolidation are considered to be the articles
19 of incorporation of the new buying cooperative. In the case of a merger, the articles of incorporation of
20 the surviving buying cooperative are considered to be amended to the extent, if any, that changes in the
21 articles of incorporation of the surviving buying cooperative are provided for in the articles of merger.

22

23 **NEW SECTION. Section 29. Dissolution of buying cooperative that has not commenced business.**

24 (1) A buying cooperative that has not commenced business may dissolve voluntarily by delivering to the
25 secretary of state articles of dissolution, executed on behalf of the buying cooperative by a majority of
26 the incorporators. The articles of dissolution must state:

- 27 (a) the name of the buying cooperative;
28 (b) the address of its principal office;
29 (c) the date of its incorporation;
30 (d) that the buying cooperative has not commenced business;

1 (e) that the amount, if any, actually paid in on account of membership fees, less any part of the
2 amount disbursed for necessary expenses, has been returned to those entitled to money and that all
3 easements have been released to the grantors;

4 (f) that there are not any unpaid buying cooperative debts; and

5 (g) that a majority of the incorporators elect that the buying cooperative be dissolved.

6 (2) The articles of dissolution must be submitted to the secretary of state for filing, as provided
7 in [sections 1 through 32].

8

9 NEW SECTION. Section 30. Dissolution and winding up of buying cooperative that has
10 commenced business. A buying cooperative that has commenced business may dissolve voluntarily and
11 wind up its affairs in the following manner:

12 (1) The board of trustees shall first recommend that the buying cooperative be dissolved
13 voluntarily, and after that, the proposition that the buying cooperative be dissolved must be submitted
14 to the members of the buying cooperative at any annual or special meeting. The notice of the annual or
15 special meeting must include the proposition. The proposed voluntary dissolution is considered approved
16 upon the affirmative vote of not less than two-thirds of all of the members of the buying cooperative.

17 (2) Upon approval of the voluntary dissolution, a certificate of election to dissolve is executed on
18 behalf of the buying cooperative by its president or vice president and its corporate seal must be affixed
19 to the certificate and attested by its secretary or assistant secretary. The certificate must state the:

20 (a) name of the buying cooperative;

21 (b) address of its principal office;

22 (c) names and addresses of its trustees; and

23 (d) total number of members who voted for and against the voluntary dissolution of the buying
24 cooperative. The president or vice president executing the certificate shall also make and annex to the
25 certificate an affidavit stating that the provisions of this subsection were complied with. The certificate
26 and affidavit must be submitted to the secretary of state for filing as provided in [sections 1 through 32].

27 (3) Upon the filing of the certificate provided for in subsection (2) and an affidavit with the
28 secretary of state, the buying cooperative shall cease to carry on its business except to the extent
29 necessary for winding up the business of the buying cooperative, but its corporate existence must
30 continue until articles of dissolution have been filed by the secretary of state.

1 (4) After the filing of the certificate and affidavit with the secretary of state, the board of trustees
2 shall immediately mail a notice of the winding up proceedings to each known creditor and claimant and
3 publish the notice once a week for 2'successive weeks in a newspaper of general circulation in the county
4 in which the principal office of the buying cooperative is located.

5 (5) The board of trustees has the full power to wind up and settle the affairs of the buying
6 cooperative and shall proceed to collect the debts owing to the buying cooperative, convey and dispose
7 of its property and assets, pay, satisfy, and discharge its debts, obligations, and liabilities, and do all other
8 things required to liquidate its business and affairs, and after paying or adequately providing for the
9 payment of all its debts, obligations, and liabilities, the board of trustees shall distribute the remainder of
10 its property and assets among its members in proportion to the aggregate patronage of each buying
11 cooperative member:

12 (a) during the period preceding the date of the filing of the certificate that encompasses the
13 longest period of time in effect prior to the buying cooperative dissolution for determination of members
14 who are entitled to the patronage refunds for the capital redemption period; or

15 (b) if the buying cooperative was not in existence for the period provided for in subsection (5)(a),
16 then during the period of its existence.

17 (6) When all debts, liabilities, and obligations of the buying cooperative have been paid and
18 discharged or adequate provision has been made in return for all debts, liabilities, and obligations and all
19 of the remaining property and assets of the buying cooperative are distributed to the members pursuant
20 to the provisions of this section, the board of trustees shall authorize the execution of articles of
21 dissolution that must be executed on behalf of the buying cooperative by its president or vice president
22 and its corporate seal must be affixed to the articles of dissolution and attested by its secretary. The
23 articles of dissolution must include in the caption that the articles of dissolution are executed pursuant
24 to [sections 1 through 32] and must state:

25 (a) the name of the buying cooperative;

26 (b) the address of the principal office of the buying cooperative;

27 (c) that the buying cooperative has up to this time filed with the secretary of state a certificate
28 of election to dissolve and the date on which the certificate was filed;

29 (d) that all debts, obligations, and liabilities of the buying cooperative have been paid and
30 discharged or that adequate provision has been made in return for all debts, obligations, and liabilities;

(e) that all the remaining property and assets of the buying cooperative have been distributed among the members in accordance with the provisions of this section; and

(f) that there are not any actions or suits pending against the buying cooperative. The president or vice president executing the articles of dissolution shall also make and annex to the articles of dissolution an affidavit stating that the provisions of this subsection (6) were met. The articles of dissolution and affidavit, accompanied by proof of the publication required in this subsection, must be submitted to the secretary of state for filing as provided in [sections 1 through 32].

NEW SECTION. Section 31. Incorporation, amendment, consolidation, merger, conversion, and dissolution filings. (1) Articles of incorporation, amendment, consolidation, merger, conversion, or dissolution, when executed and accompanied by an affidavit that may be required by applicable provisions of [sections 1 through 32], must be presented to the secretary of state for filing. If the secretary of state finds that the articles presented conform to the requirements of [sections 1 through 32], the secretary of state shall upon the payment of the fees provided for in 35-18-502, file the articles, and upon the filing, the incorporation, amendment, consolidation, merger, conversion, or dissolution is legally effective.

(2) The secretary of state, immediately upon the filing of any articles pursuant to [sections 1 through 32], shall transmit a certified copy of the filing to the county clerk of the county in which the principal office of each buying cooperative or corporation affected by the incorporation, amendment, consolidation, merger, conversion, or dissolution is located. The clerk of any county, upon receipt of the certified copy, shall file and index the certified copy in the records of the clerk's office. Failure of the secretary of state or of a clerk of a county to comply with the provisions of this section does not invalidate the articles.

(3) The provisions of this section also apply to certificates of election to dissolve and affidavits of compliance executed pursuant to [section 30].

NEW SECTION. Section 32. Exemption from taxes. Buying cooperatives transacting business in this state pursuant to [sections 1 through 32] are exempt from all excise and income taxes.

Section 33. Section 69-8-103, MCA, is amended to read:

"69-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the

1 following definitions apply:

2 (1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that
3 aggregates retail customers and purchases electric energy and takes title to electric energy as an
4 intermediary for sale to retail customers.

5 (2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing
6 vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's
7 interest in or right to transition property. The term also includes an entity, corporation, public authority,
8 partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as
9 security, the assignee's interest in or right to transition property.

10 (3) "Board" means the board of investments created by 2-15-1808.

11 (4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent
12 or intermediary in the sale and purchase of electric energy but that does not take title to electric energy.

13 (5) "Cooperative utility" means:

14 (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

15 (b) an existing municipal electric utility as of May 2, 1997.

16 (6) "Customer" or "consumer" means a retail electric customer or consumer. The university of
17 Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each
18 considered a single retail electric customer or consumer with a single individual load.

19 (7) "Default supplier" means a distribution utility or a person that has received a license pursuant
20 to [section 37].

21 ~~(7)~~(8) "Distribution facilities" means those facilities by and through which electricity is received
22 from a transmission services provider and distributed to the customer and that are controlled or operated
23 by a distribution utility.

24 ~~(8)~~(9) "Distribution services provider" means a person controlling or operating distribution facilities
25 for distribution of electricity to the public.

26 ~~(9)~~(10) "Electricity supplier" means any person, including aggregators, market aggregators,
27 brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

28 ~~(10)~~(11) "Financing order" means an order of the commission adopted in accordance with
29 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of
30 transition bonds.

1 ~~(11)~~(12) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including
2 but not limited to:

- 3 (i) distribution;
4 (ii) connection;
5 (iii) disconnection; and
6 (iv) termination rates and charges that are authorized by the commission in a financing order to
7 permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the
8 transition costs and acquiring transition property through a plan approved by the commission in the
9 financing order, including the costs of issuing, servicing, and retiring transition bonds.

10 (b) If requested by the utility in the utility's application for a financing order, fixed transition
11 amounts must include nonbypassable rates or charges to recover federal and state taxes in which the
12 transition cost recovery period is modified by the transactions approved in the financing order.

13 ~~(12)~~(13) "Functionally separate" means a utility's separation of the utility's electricity supply,
14 transmission, distribution, and unregulated retail energy services assets and operations.

15 ~~(13)~~(14) "Local governing body" means a local board of trustees of a rural electric cooperative.

16 ~~(14)~~(15) "Low-income customer" means those energy consumer households and families with
17 incomes at or below industry-recognized levels that qualify those consumers for low-income
18 energy-related assistance.

19 ~~(15)~~(16) "Nonbypassable rates or charges" means rates or charges approved by the commission
20 imposed on a customer to pay the customer's share of transition costs or universal system benefits
21 program costs even if the customer has physically bypassed either the utility's transmission or distribution
22 facilities.

23 ~~(16)~~(17) "Pilot program" means a program using a representative sample of residential and small
24 commercial customers to assist in developing and offering customer choice of electric supply for all
25 residential and commercial customers.

26 ~~(17)~~(18) "Public utility" means any electric utility regulated by the commission pursuant to Title
27 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

28 (19) "Small customer" means a residential customer or a small business customer who has
29 accounts possessing an aggregated monthly peak of 100 kilowatts or less.

30 ~~(18)~~(20) "Transition bondholder" means a holder of transition bonds including trustees, collateral

1 agents, and other entities acting for the benefit of that holder.

2 ~~(19)~~(21) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust
3 certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds
4 issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from
5 transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire
6 transition property.

7 ~~(20)~~(22) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer
8 to pay the customer's share of transition costs.

9 ~~(21)~~(23) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending
10 when a utility customer does not have any liability for payment of transition costs.

11 ~~(22)~~(24) "Transition costs" means:

12 (a) a public utility's net verifiable generation-related and electricity supply costs, including costs
13 of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law
14 requiring retail open access or customer choice;

15 (b) those costs that include but are not limited to:

16 (i) regulatory assets and deferred charges that exist because of current regulatory practices and
17 can be accounted for up to the effective date of the commission's final order regarding a public utility
18 transition plan and conservation investments made prior to universal system benefits charge
19 implementation;

20 (ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

21 (iii) existing generation investments and supply commitments or other obligations incurred before
22 May 2, 1997, and costs arising from these investments and commitments;

23 (iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power
24 purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to
25 issuing transition bonds; and

26 (v) the costs of refinancing and retiring of debt or equity capital of the public utility and
27 associated federal and state tax liabilities or other utility costs for which the use of transition bonds would
28 benefit customers.

29 ~~(23)~~(25) "Transition period" means the period beginning on July 1, 1998, and ending on July 1,
30 2002, unless otherwise extended pursuant to this chapter, during which utilities may phase in customer

1 choice of electricity supplier.

2 ~~{24}~~(26) "Transition property" means the property right created by a financing order including
3 without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to
4 all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed
5 transition amounts that are the subject of a financing order including those nonbypassable rates and other
6 charges and fixed transition amounts that are authorized by the commission in the financing order to
7 recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition
8 costs and acquiring transition property including the costs of issuing, servicing, and retiring transition
9 bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other
10 right created under this section or created in the financing order and assignable under this chapter or
11 assignable pursuant to a financing order is only a contract right.

12 ~~{25}~~(27) "Transmission facilities" means those facilities that are used to provide transmission
13 services as determined by the federal energy regulatory commission and the commission.

14 ~~{26}~~(28) "Transmission services provider" means a person controlling or operating transmission
15 facilities.

16 ~~{27}~~(29) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed
17 on a customer to pay the customer's share of universal system benefits program costs.

18 ~~{28}~~(30) "Universal system benefits programs" means public purpose programs for:

19 (a) cost-effective local energy conservation;

20 (b) low-income customer weatherization;

21 (c) renewable resource projects and applications, including those that capture unique social and
22 energy system benefits or provide transmission and distribution system benefits;

23 (d) research and development programs related to energy conservation and renewables;

24 (e) market transformation designed to encourage competitive markets for public purpose
25 programs; and

26 (f) low-income energy assistance.

27 ~~{29}~~(31) "Utility" means any public utility or cooperative utility."

28
29 Section 34. Section 69-8-203, MCA, is amended to read:

30 "69-8-203. Public utility -- customer choice -- continued service -- education of customers. (1)

1 A customer is permitted to choose an electricity supplier pursuant to the deadlines established in
2 69-8-201. Public utilities shall propose a method for customers to choose an electricity supplier.

3 (2) If a customer has not chosen an electricity supplier by the end of the transition period, a public
4 utility shall propose a method in the public utility's transition plans for assigning that customer to an
5 electricity supplier.

6 (3) The commission shall designate a default supplier to provide electricity supply service to small
7 customers as provided in [section 37].

8 ~~(3)~~(4) A public utility may phase in customer choice to promote the orderly transition to a
9 competitive market environment pursuant to the deadlines in 69-8-201.

10 ~~(4)~~(5) Public utilities shall educate their customers about customer choice so that customers may
11 make an informed choice of an electricity supplier. This education process must give special emphasis to
12 education efforts during the transition period."

13

14 **Section 35.** Section 69-8-210, MCA, is amended to read:

15 "69-8-210. Public utilities -- electricity supply. (1) On the effective date of a commission order
16 implementing a public utility's transition plan pursuant to 69-8-202, the public utility shall remove its
17 generation assets from the rate base.

18 ~~(2) During the transition period, the commission may establish cost-based prices for electricity~~
19 ~~supply service for customers that do not have a choice of electricity supply service or that have not yet~~
20 ~~chosen an electricity supplier.~~

21 ~~_____ (3) If the transition period is extended, then the customers' distribution services provider shall:~~

22 ~~_____ (a) extend any cost-based contract with the distribution services provider's affiliate supplier for~~
23 ~~a term not more than 3 years; or~~

24 ~~_____ (b) purchase electricity from the market; and~~

25 ~~_____ (c) use a mechanism that recovers electricity supply costs in rates to ensure that those costs are~~
26 ~~fully recovered.~~

27 ~~(4)~~(2) If a public utility intends to be an electricity supplier through an unregulated division, then
28 the public utility must be licensed as an electricity supplier pursuant to 69-8-404."

29

30 **Section 36.** Section 69-8-403, MCA, is amended to read:

1 **"69-8-403. Commission authority -- rulemaking authority.** (1) Beginning on the effective date of
2 a commission order regarding a public utility's transition plan, the commission shall regulate the public
3 utility's retail transmission and distribution services within the state of Montana, as provided in this
4 chapter, and may not regulate the price of electricity supply except as electricity supply may be procured
5 ~~during the transition period by the the default supplier or by the distribution function of a public utility for~~
6 ~~those customers that have not chosen an electricity supplier or for those customers that have not yet~~
7 ~~been assigned an electricity to an alternative default supplier as provided in [section 37].~~ During the
8 transition period, those procurements may include a cost-based contract from a supply affiliate or an
9 unregulated division.

10 ~~—— (2) If the transition period is extended for certain customers because the commission finds that~~
11 ~~workable competition in the electricity supply market does not exist, then the commission shall continue~~
12 ~~to regulate the provision of electricity supply by distribution services providers in accordance with~~
13 ~~69-8-210.~~

14 ~~(3)~~(2) The commission shall decide if there is workable competition in the electricity supply
15 market by determining whether competition is sufficient to inhibit monopoly pricing or anticompetitive
16 price leadership. In reaching a decision, the commission may not rely solely on market share estimates.

17 ~~(4)~~(3) The commission shall license electricity suppliers and enforce licensing provisions pursuant
18 to 69-8-404.

19 ~~(5)~~(4) The commission shall promulgate rules that identify the licensees and ensure that the
20 offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

21 ~~(6)~~(5) The commission shall establish just and reasonable rates through established ratemaking
22 principles for public utility distribution and transmission services and shall regulate these services. The
23 commission may approve rates and charges for electricity distribution and transmission services based
24 on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the
25 public utility that the alternative method complies with this chapter, and on the public utility's transition
26 plan.

27 ~~(7)~~(6) The commission shall certify that a cooperative utility has adopted a transition plan that
28 complies with this chapter. A cooperative utility's transition plan is considered certified 60 days after the
29 cooperative utility files for certification.

30 ~~(8)~~(7) The commission shall promulgate rules that protect consumers, distribution services

1 providers, and electricity suppliers from anticompetitive and abusive practices.

2 ~~(9)(8)~~ In addition to promulgating rules expressly provided for in this chapter, the commission may
3 promulgate any other rules necessary to carry out the provision of this chapter.

4 ~~(10)(9)~~ This chapter does not give the commission the authority to:

5 (a) regulate cooperative utilities in any manner other than reviewing certification filings for
6 compliance with this chapter; or

7 (b) compel any change to a cooperative utility's certification filing made pursuant to this chapter."

8

9 NEW SECTION. Section 37. Default supplier license. (1) (a) A person may submit an application
10 to the commission to become the default supplier for the small customers of a public utility whose
11 customers have access to choice of an electricity supplier. There may be only one default supplier for
12 a public utility's small customers. The public utility shall serve as the default supplier if another person
13 is not designated by the commission as the default supplier pursuant to the provisions of this section.

14 (b) All small customers of a distribution utility must be offered electricity supply service by the
15 default supplier until the commission has determined that workable competition has developed for small
16 customers. After a determination has been made, the commission must provide a method for ensuring
17 that electricity supply service remains available to small customers.

18 (2) The commission shall establish rules for filing and considering a default supplier application,
19 determining the length of default supplier status, and revoking default supplier status. The commission
20 rules must provide for allowing the public utility and other interested persons to participate.

21 (3) The commission shall ensure that the price of electricity charged by the default supplier is just
22 and reasonable and shall consider in designating or revoking default supplier status:

23 (a) financial integrity;

24 (b) reliability and source of the supply offered;

25 (c) customer service provided; and

26 (d) other factors influencing whether reliable and affordable electricity supply to small customers
27 is, or will be, provided.

28 (4) During the transition period, the default supplier shall provide a supply product that meets the
29 rate moratorium provisions provided in 69-8-211. The default supplier also may offer other supply choices
30 to customers that affirmatively opt out of the rate moratorium.

1 (5) The commission may promulgate rules necessary to implement this section.

2
3 **NEW SECTION.** **Section 38. Default supplier -- license revocation.** The commission may revoke
4 default supplier status for just cause on the commission's own investigation or upon complaint of an
5 affected party, if it finds that the default supplier has violated the terms of default supplier status. Upon
6 revocation, default supplier status reverts to the public utility, unless and until the commission grants new
7 default supplier status to another person.

8
9 **NEW SECTION.** **Section 39. Severability.** If a part of [this act] is invalid, all valid parts that are
10 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
11 applications, the part remains in effect in all valid applications that are severable from the invalid
12 applications.

13
14 **NEW SECTION.** **Section 40. Saving clause.** [This act] does not affect rights and duties that
15 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
16 act].

17
18 **NEW SECTION.** **Section 41. Codification instruction.** (1) [Sections 1 through 32] are intended
19 to be codified as an integral part of Title 35, and the provisions of Title 35 apply to [sections 1 through
20 32].

21 (2) [Sections 37 and 38] are intended to be codified as an integral part of Title 69, chapter 8, and
22 the provisions of Title 69, chapter 8, apply to [sections 37 and 38].

23
24 **NEW SECTION.** **Section 42. Effective date.** [This act] is effective on passage and approval.

25 - END -

FISCAL NOTE

Bill #: SB0406

Title: Revise laws for formation of cooperative to purchase power for small customers

Primary

Sponsor: Steve Doherty

Status: As introduced

Steve Doherty 2/12/99
Sponsor signature Date

Dave Lewis 2-11-99
Dave Lewis, Budget Director Date

Fiscal Summary

	FY2000 Difference	FY2001 Difference
Expenditures:	\$0	\$0
Revenue:	\$0	\$0
Net Impact on General Fund Balance:	\$0	\$0

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. SB406 has no fiscal impact to state government.

SB 406

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on February 17, 1999 at 8:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 436, 2/12/1999
SB 437, 2/12/1999
SB 406, 2/12/1999
HB 211, 2/12/1999
Executive Action: SB 367; SB 436
SB 437; SB 389

{Tape : 1; Side : A; Approx. Time Counter : 0}

bill. A big portion of this bill defines what these people are not; rather, it's trying to stay in that natural health arena. Hopefully, people will go to individuals with experience. If you feel you have to provide a scope of practice definition or if you want to establish some credentialing, we could take a look at that. We can carve out an area for these people to practice without impinging on other turf.

{Tape : 1; Side : B; Approx. Time Counter : 0}

HEARING ON SB 437

Sponsor: SEN. MIKE HALLIGAN, SD 34, MISSOULA

Proponents: None

Opponents: None

Opening and Closing Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, MISSOULA. This is a companion bill to SB 436 that simply puts \$100 registration fee on the ballot because of CI-75.

HEARING ON SB 406

Sponsor: SEN. STEVE DOHERTY, SD 24, GREAT FALLS

Proponents: Bob Anderson, Public Service Commission
Bill K. Drummond, Western MT Electric Generating
& Transmission Cooperative, Inc., WMG&T
Debbie Smith, Natural Resources Defense Council
Jack Haffey, Montana Power Co.
John Hines, Governor's Office
Jeff Barber, MT Environmental Information Center

Opponents: None

Opening Statement by Sponsor:

SEN. STEVE DOHERTY, SD 24, GREAT FALLS. This bill deals with utility deregulation because we need to plan for the competitive environment the legislature and Governor thought we'd have when SB 390 was passed last session. **Senate Bill 406** approaches the issue of what happens to the small customers and what can be done for them to ensure reliable, efficient energy supplies at a reasonable price in two ways: buying cooperatives and default suppliers.

A buying cooperative would be able to go into the wholesale market to buy and sell electricity, almost like a commodities trader. A section of the bill also allows them to sell the electricity to someone else if it's not consumed by their members.

A default supplier would be determined by the Public Service Commission and is the backstop. Who is going to supply the small consumers because they're scattered all over Montana and have small loads. This bill would allow a buying co-op to be set up who would become the default supplier. Why is that a good or bad idea? It's a matter of public policy to try to complement the competitive nature of SB 390. One default supplier will be one regulated entity, less workload for the Commission and the ability to aggregate customers in order to get a competitive price from anybody who wants to sell electricity. There will be many customers who will not be attractive when competition happens in 2004.

The reason for the length of the bill is a new buying cooperative is being set up and most of the pages deal with that. The meat of the bill is Page 26, Section 37, which says a person may submit an application and the bill deals with a buying co-op being a person who could submit a license to the PSC to be the default supplier and the Commission would have to make the call as to who would be that default supplier.

Proponents' Testimony:

Bob Anderson, Public Service Commission. I'm here to represent the Commission's view and am a proponent of the bill because of the twin goals of the implementation of SB 390. One is concerned with protection. If SB 390 isn't fulfilled by the deadline,

customers could be in a tough spot of not having a supplier. The default provision of **SB 406** would provide that. The other goal is competition and both goals are compatible in **SB 406**. The Commission would have the obligation of choosing the default supplier and would determine the price, a key provision of the bill. I would like to submit an amendment **EXHIBIT(bus39a05)** to **Page 19, Section 31, Lines 27-28**, so the co-op wouldn't be exempt from the PSC and Consumer Counsel Tax because other providers aren't exempt and the PSC depends on the tax in order to pay its budget.

{Tape : 1; Side : B; Approx. Time Counter : 8}

Bill K. Drummond, Western Montana Electric Generating and Transmission Cooperative. He read his written testimony **EXHIBIT(bus39a06)**.

Debbie Smith, Natural Resources Defense Council. I'm pleased to support the bill and agree with the testimony that's already been given. The parties are still working together to fine-tune the bill and make it even better -- we hope to have additional language to the Committee by the end of the day. Sections 1-32 of the bill are concerned with setting up the buying co-op, but the meat of the bill is on the last two pages. The reason for establishing buying cooperatives is to maximize the chances that small customers would be better off than not from utility deregulation restructuring. The legislature needs to give small customers the tools they need in order to compete in a restructured world. It is possible that through a buying cooperative entity, the small customers of Montana Power could be better off, which would mean the state would be better off. This bill potentially allows Montana to get more use from the Columbia River Basin at the best price and that's why we're authorizing the formation of these buying co-ops. It doesn't mean the co-op is the "shoe-in" for the default supplier, nor does it mean that co-op would necessarily have any price advantages over a for-profit corporation that may own its own plant. **Senate Bill 406** does nothing to change the date by which retail competition has to be fully available to all small customers; rather, it deals with the situation that if there are no competitors who want to compete for this supply on an individual residence-by-residence or main street business-by-business. This is a good bill which has a lot of support. I would urge your favorable consideration.

I have copies of the summations of the bill draft for each Committee member **EXHIBIT(bus39a07)**.

{Tape : 1; Side : B; Approx. Time Counter : 18.2}

Jack Haffey, Montana Power Company. I speak in support of **SB 406**. It was anticipated when SB 390 passed, there would be a need for a bridge to bring the benefits of competition to small customers because not all licensed suppliers are going to see a desirable market for the small customers. But competition is working because 17% of our electric market has already chosen an alternative supplier; however, the small, small residential and commercial customers are going to need access to the benefits of competition. This bill offers a system-wide default supplier vehicle which would be legitimate; the amendments would ensure the public interest was well served. All of us want a robust competitive supply market. Other states have experienced the same kind of need for a bridge that we're experiencing but haven't come up with the idea that's been presented today. Montana Power Company supports **SB 406** with the amendments we've agreed on **EXHIBIT(bus39a08)**.

John Hines, Governor's Office. We support the bill. We approached the negotiations from a different perspective. We tried to ensure that what we did to protect consumers, didn't in some way create problems in the development of a future market. This bill reflects those concerns were taken care of. Section 6 limits the activities of a co-op which is serving as a default provider. A feature of the bill is the default provider is required to serve all customers who apply to it, i.e. the provider can't pick and choose only those customers who are the most profitable. This default provider concept is a special responsibility which will be granted someone; they're there as the backstop to ensure the small consumers receive electricity. However, with the responsibility comes the need for oversight and this bill requires whoever is chosen is under the PSC.

Jeff Barber, Montana Environmental Information Center. This is a consensus bill and contains compromises, some of which we don't particularly like; however, we support it. Protecting the small customers was the most important issue and was too important to fight over what the co-op would look like. It creates a process for establishing a co-op and default supplier and we think it

gives the small customers the best opportunity to ensure they will receive power at a decent price if the provision of SB 390 isn't completely fulfilled or take a little longer than originally anticipated. I hope you'll give the bill a DO PASS.

Opponents' Testimony: None.

{Tape : 1; Side : B; Approx. Time Counter : 25.6}

Questions from Committee Members and Responses:

SEN. MIKE SPRAGUE asked if Montana Power was currently a singular default provider. **Jack Haffey** said the Commission would designate an entity to be the default supplier; in fact, there was a docket in front of the Commission where MPC submitted their proposal for acting out SB 390's customer choice obligations and opportunities. The docket contained two proposals: (1) have MPC be the default supplier; (2) have those who have not yet chosen by the end of the transition period be allocated to all the licensed suppliers who were providing electricity at that time. They were willing to be the default supplier for those who haven't chosen, but we think this bill offers legitimate alternative means through which benefits got system-wide to all customers connected to our system who didn't choose. "Supplier" was singular.

SEN. SPRAGUE said **Jack Haffey's** testimony said if the default supplier had a problem, MPC would jump back in but there would be some costs to readjust. **Jack Haffey** said the reason they said it should be the public interest's goal is the benefits of the competitive market place got to all customers, small and large. If that default supplier for some reason was unable to continue on into the future, there needed to be someone the Commission designated if there were still those who had not chosen their own supplier. It's common sense MPC would be the one the Commission would designate; however, there needed to be some transition.

SEN. SPRAGUE referred to **Page 19, Lines 26-27**, and said currently MPC paid an income tax. **Mr. Haffey** said they did; however, the public interest goal of getting benefits of the competitive market place to the small customers, knowing that it might be a

challenge, necessitated the tax exemption as a condition, i.e. it was a public interest condition.

SEN. SPRAGUE asked if the status was to be tax exempt, why it wouldn't be a benefit to have more suppliers. **Jack Haffey** said the more default suppliers there were, the less likely that there would be equitable access to benefits of the competitive marketplace for those customers who chose not to choose. There should be a goal equitable access through one entity, which was exactly what MPC would be if they were designated by the PSC as the default supplier. An equitable system could be best obtained through a one-system default supplier. If they got away from that, some would get a better deal than others from another default supplier.

{Tape : 1; Side : B; Approx. Time Counter : 34.1}

SEN. JOHN HERTEL asked the same question of **Bill Drummond** and was told the market to be pursued was small, residential and commercial customers who don't have an alternative supply. How was it possible to minimize the cost of electricity to those customers and yet be able to spread the benefits to them? He believed having a single supplier with only one set of overheads, etc. and to be able to aggregate as many customers together as possible to get the lowest possible price to provide service in the market made the most sense.

SEN. HERTEL referred to **Section 6** which limited the use to less than 100 kilowatts and asked about the business starting up which used more than that but had no other default supplier. **Mr. Drummond** said the theory was if customers were of a sufficient size, they would be attractive for suppliers to try and market to. It was his experience if customers were 100 KW or above, they were attractive in and of themselves or were able to aggregate together with other customers.

SEN. HERTEL asked if they would be back in two years to ask for permission to serve customers with bigger usage. **Bill Drummond** said the default supplier could function very well with customers of 100 KW or less. However, if it were the preference of the legislature to increase that number, that would benefit the small customer because they would have more attractive consumers as part of their customer phase.

SEN. SPRAGUE asked if there was any wisdom for a municipality to pool its buying power as a default provider for citizens who didn't choose another alternative source. **Bill Drummond** said he had worked for cities and towns who provided electricity for their inhabitants; certainly there are many examples of effective services provided in this way. However, the difference was where this was done, the electricity was provided to all customers: commercial, residential or industrial. In the case of this bill, the market was being specifically limited so as not to prevent the default supplier from overwhelming any other competition in the state. When customer size was limited to 100 KW it would be very difficult to efficiently and economically provide that electric service if it was done on a series of small increments.

{Tape : 2; Side : A; Approx. Time Counter : 0}

Closing by Sponsor:

SEN. STEVE DOHERTY. We need to provide a bridge under SB 390 to give those unwanted customers an opportunity to share the benefit of a competitive market. Under SB 390 the power company's obligation to become the default supplier ends in 2004 and if we don't pass this bill there is no backstop. If this idea falls flat on its face in 2004 and MPC is the final backstop because we're pulling them back in, they should be entitled to some cost adjustments. That doesn't defeat the purpose of the bill. This bill has been called a bridge; however, it's also a teeter-totter because we're trying to balance consumer protection with the competitive market, two ideas that are almost opposites. The PSC in the regulated world provided consumer protection; however, in the competitive market, the entities with a large load may be able to negotiate with the power supplier to get a good rate. Those of us who are small customers won't be able to negotiate very effectively because we aren't lumped together. We need to get together and form ourselves into a buying co-op, which would allow the opportunity to go after being the default supplier. Others could compete with the co-op but the PSC will have to make the call as to who the default supplier would be. The Bonneville Power Administration has cheap power and there is an opportunity for a buying co-op to qualify for power. If that happens in a competitive way, we can get the cheaper power and meld it with the other power in the market. That will mean cheaper prices for

Montana. This bill is a balanced bridge to make that happen. I urge you to adopt SB 406.

{Tape : 2; Side : A; Approx. Time Counter : 4.1}

HEARING ON HB 211

Sponsor: REP. ROYAL JOHNSON, HD 10, BILLINGS

Proponents: Bob Anderson, Public Service Commission
Alec Hanson, MT League of Cities & Towns
Greg Groepper, City of Helena

Opponents: None

Informational Testimony: Jack Haffey, Montana Power Co.
Bill Drummond, Western MT Electric
Generating & Transmission
Cooperative, Inc., WMG&T

Opening Statement by Sponsor:

REP. ROYAL JOHNSON, HD 10, BILLINGS. This bill is different from SB 406. A part of SB 390 required the PSC to set up rules, regulations, etc., for the transition. It said they didn't see anything in the way of a default provider and since cities, counties, etc., provide other services, we wondered why they couldn't have an opportunity to deliver electricity if you choose not to buy it from somebody else, i.e. be the default provider. When I presented this bill in the House there was not one person against it. It's the responsibility of the entire PSC to set rules and regulations. This bill asks for is for an opportunity for cities, counties or consolidated governments to make application for being the default provider. We don't want to be exclusive or eliminate anybody. The lines through which this electricity will come are there now and I can decide who that provider will be. But in case I don't want to make that choice, the city can say they want that person to have a choice. This bill provides that any of you who want to be a default provider can qualify.

PROPOSED AMENDMENTS TO SENATE BILL 406

PUBLIC SERVICE COMMISSION

SENATE BUSINESS AND INDUSTRY ROOM 410

February 17, 1999

1. Page 19, lines 27-28.

Following: "taxes"

Insert: "except the Montana Consumer Counsel and Public Service Commission fees collected under Title 69, Chapter 1, Parts 2 and 4."

Testimony on SB 406
Business and Industry Committee
February 17, 1999

My name is William K. Drummond and I am testifying on behalf of Western Montana Electric Generating and Transmission Cooperative. WMG&T is an association of six electric cooperatives and a tribal utility that serve approximately 85,000 consumer-members.

I am testifying today in favor of SB406. It is the result of many months of work of a group that has included representatives of Montana Power, the Governor's office and NWPPC, environmental groups, low income advocates, a consultant employed by the League of Cities and Towns, and others. While not all those groups may now support this proposal, they have certainly been a part of a process that has been operating for almost one year.

We support SB 406 because establishes a competitive process for selecting a default supplier, it establishes a mechanism for supplying electric service with PSC oversight until competition gets going, and it allows for the formation of a Small Customer Buying Cooperative as a potential supply mechanism.

In this testimony, I want to emphasize four points. First, why is it

necessary to spend so much time and attention on the issue of a default supplier, especially for small customers? There are several reasons.

First, no state in the country that has allowed competition for electricity supply has seen lasting competition for small customers. These customers are: high cost to serve; provide low margins; buy little volume compared to larger customers; and have high customer service costs. Especially in a largely rural state like Montana with very low customer density, marketing costs are much higher per customer. It is just not clear that competition will actually blossom for residential customers.

Second, although surveys show that consumers are interested in having a choice, few actually exercise it. MPC's customer choice pilot program sign up garnered 21,000 residential customers, according to Company reports, who said they were interested in getting information about competition — about 6% of total residential base. In California, less than 1% of residential customers have signed with alternative suppliers. A recent pilot program run by Pacific Power & Light in Oregon obtained only a 6% participation by residential customers. We are seeing these same results nationwide. Thus, even where choices exist, few consumers actually exercise it.

My second point: Why do you have to address this issue now? Full customer choice is not legislatively mandated until 2002, why decide now? It will take time to set up the MPSC process, determine minimum qualifications for potential suppliers, operate the bidding process and for the supplier to get the necessary contracts and other mechanisms in place. Now is not too early to begin that process. Second, Bonneville Power Administration is beginning a process to sell the output of the federal dams along the Columbia and Snake Rivers. Whatever entity is chosen to be the default supplier needs to be able to participate in that process.

My third point: A single default supplier who serves all of a distribution utility's customers is the best approach. Others have proposed that there be any number of default suppliers. A single default supplier, however, makes more sense for several reasons.

Having a multitude of default suppliers means higher costs — administrative and power supply — for default customers. Each default supplier will have its own overheads, personnel and bureaucracy. Each supplier will also have to negotiate its own power supply and transmission contracts. All this effort will result in higher costs to provide default service to those who elect not to choose another supplier or perhaps, because of

their economic status, have no choice of alternative supplier. Why force higher costs on these customers?

Having many default suppliers also means having many different electric rates for default service. So, as you move from one town to the next, you pay a different electric rate for default service. Many default suppliers also means more regulation — the PSC would have to regulate each and every default supplier. Imagine 50 different default suppliers in Montana and the regulatory and administrative burden that would result.

One default supplier, chosen from among competing bids by the MPSC, is a far more workable and economic solution.

My final point: The default supplier will not become a “super competitor” with appropriate safeguards. Some have expressed the fear that having a single default supplier will mean that no other electric suppliers will be able to break into the market — the default supplier will become a “super competitor.” This bill, unlike some other proposals, takes steps to make sure that cannot happen. Under SB 406, the buying cooperative can only serve one class of customers — those with loads less than 100kw. The buying cooperative would not be allowed to go after medium or large commercial, or industrial customers. Second, the buying

cooperative would not be allowed to offer any other products except electricity supply — no telephone service, natural gas or propane, internet — just the electricity commodity.

In summary, I believe SB 406 offers a superior mechanism for providing default supplier service and deserving of your support.

Thank you for this opportunity to testify.

SB 390
LC 1014 - A Bill to Authorize the Formation of Electricity Buying Cooperatives
and to Establish a Process for Designating an Electricity Default Supplier
for Small Customers

Bill Description

1. Allows for formation of electricity buying cooperatives to provide electrical supply service to residential and small business customers within a public utility's service territory that is open to small-customer choice of supplier.
 - Does not apply to rural electric coops or to public utilities whose distribution systems are not yet open to small-customer choice of supplier.
2. Allows any person or entity, including a buying cooperative, to compete for default supplier status in a public-utility service territory that is open to small customer choice of supplier.
 - Allows another entity to step into the shoes of Montana Power Company, for example, in terms of providing electrical supply service - it does not disaggregate the public utility's small-customer load.
3. Requires the default supplier to comply with terms and procedures established in the bill.
 - Provides uniform rules and a level playing field for the default supplier to meet, regardless of the type of entity it is (e.g., the public utility, a buying cooperative, a municipality or other local government, or a private corporation).

Why Does Montana Need This Now?

1. The bill allows benefits of competition to be realized by small electricity customers who otherwise will not enjoy the benefits of full retail competition for many years.
 - It does not inhibit full retail competition from developing - it simply allows another entity to be able to step into the shoes of Montana Power Company to provide default supply to small customers.
2. The bill establishes a safety net for small electricity customers by requiring that default service be provided until workable competition develops.
 - The public utility is designated the default supplier if no other entity qualifies to receive default supplier status.
3. The bill optimizes the chances of small customers being able to avoid significant rate increases following the transition period, and allows them to benefit from preferential access to federal hydropower system power - an opportunity that was not available before last session's utility restructuring law was enacted.
 - One of the primary goals of SB 390 was to allow *all* customers to benefit from access to alternative supply sources and to enjoy lower electricity rates. Passage of this bill this session will maximize the chances of Montana securing the greatest access to Bonneville system hydropower at the most preferential rates in the future.

SB 390
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and to Establish a Process for Designating an Electricity Default Supplier
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 - It does not inhibit full retail competition from developing - it simply allows another entity to be able to step into the shoes of Montana Power Company to provide default supply to small customers.
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 - One of the primary goals of SB 390 was to allow *all* customers to benefit from access to alternative supply sources and to enjoy lower electricity rates. Passage of this bill this session will maximize the chances of Montana securing the greatest access to Bonneville system hydropower at the most preferential rates in the future.

Testimony by Jack Haffey
On behalf of The Montana Power Company
Proponent of SB 406 with Amendments

The reasons that Montana Power Company supports this bill are the following:

1. It provides for a single default provider that will provide default provider service to those customers needing service if the Commission determines that workable competition does not exist.
2. It provides for a buying coop structure that may entitle those entities to have access to federal Power Marketing Authority cost-based power.

We believe that both of these objectives are good and will benefit electric customers in Montana **BUT ONLY IF OUR AMENDMENTS ARE ADOPTED.**

If our amendments are not adopted,

1. We are concerned that the entity that is the default provider and/or the buying coops may be able to undermine and prevent competition from developing in Montana. If the buying coop, who may also be chosen to be the default provider, is able to purchase cost-based federal PMA power, and it is lower cost than the market, and provide that power to all customers that have not chosen a competitive electric supplier, then it is unlikely that those customers will ever choose an electric supplier because the default supplier service will be less expensive than any other power on the market.

To address this concern, the amendments would give the Commission the authority to decide which entity or entities should contract for the PMA power based on the entity's ability to maximize benefit to the customer. The Commission would see to it that the power is spread to all small customers, and not only the customers of the entity obtaining the PMA power. Finally, the entity obtaining the PMA power would not be able to average the cost of the PMA power with other market-priced supply to achieve a lower than market price. The two supplies must be kept separate.

2. We are concerned that the public utility, which is Montana Power, will be relied on to "back up" the default supplier. We do not intend to do that. If another default supplier is chosen by the Commission, then MPC will not backup that default supplier. If that default supplier's license is revoked and for some reason another default supplier is not chosen, then Montana Power will gear back up to provide this service. However, it must be given appropriate notice and it must be allowed to recover its costs.

If Montana Power is required to back up the default provider, duplicate costs will result and Montana Power is not assured of recovering those costs. The amendments to SB 406 address these concerns.

3. Other provisions in the bill address Montana Powers concern that the buying coop not become a "super competitor" that puts other supply competition out of business. Since buying coops will have tax exempt status, which is necessary for them to obtain federal PMA power, it is important that they do not have the ability to offer service broader than providing electric supply service to small customers. We agree with the provisions that prevent the buying coop from owning transmission, distribution and generating facilities. Tax exempt status should be reserved for those non-profit organizations that the State wants to encourage, and should not be allowed to promote entities that need no encouragement.
4. Montana Power also strongly believes that the default provider role should be restricted, as proposed in our amendments. The default provider should not do anything that would prevent its customers from going, and should encourage its customers to go, to competition if they so desire. The specific restrictions are included in the amendments.

Montana Power supports this bill with these amendments but if the amendments are not adopted, then it opposes the bill because of the concerns that the amendments address.

DATE 2-17-99

[illegible]

DATE February 17, 1999

SENATE COMMITTEE ON Bus. & Ind.

BILLS BEING HEARD TODAY: SB 436, SB 437, SB 406

HB. 211

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Ellen Engstrom		NAT. COAL. NAT. HEALTH	SB 436/437	X	
Jeff Gold	406-543-2912	Coalition for Natural Health	SB 436/437	X	
Bob Anderson	6169	PSC	SB 406 HB 211		
Linn Carleton	227-5348	Big Sky Sonatic Inst.	SB 436		
Jerry Christian	449-6440	Self	436 437		X
David Hunt	458-6455	Self	436 437		X
Beverage Hunt	458-86455	Self	437		X
Jim Bunn	475-9733	Self	437		X
Robert Tersonetto	449-3311	Self	436/437		X
Max Cramer	442-2470	Self	436/437		X
Jacqueline Adams	443-4302	Self	436/437		X
Steve Meloy	444-1488	Commerce (14/2)			
Mary Jamison	442-5681	Physical Therapy Assoc.	436 437		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

209E-81

DATE February 17, 1999

SENATE COMMITTEE ON Bus. & Ind.

BILLS BEING HEARD TODAY: SB 436, 437, SB 406, HB 211

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
GREGG GROEPPER	443-4178	CITY OF HELENA	211	X	
John HINES	444-3952	Gov' office	406	X	
Deborah Smith	442-3261	NRDC/PNA	406	X	
Jack Haffley	497-2354	The Montana Power Company	406	X	
Ed Bartlett					
449-4130					
9-5674					

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on February 19, 1999 at 8:00 A.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Fred Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 482 SB 483 SB 484 SB 485,
2/15/1999; SB 501, 2/16/1999
Executive Action: SB 501; SB 482; SB 483
SB 484; SB 485; SB 452
SB 453; SB 446; SB 490
SB 406; SB 130; SB 132
SB 408; SB 360; SB 391

{Tape : 1; Side : A; Approx. Time Counter : 0}

EXECUTIVE ACTION ON SB 406

Motion: SEN. MCCARTHY moved that SB 406 DO PASS.

Discussion: SEN. FRED THOMAS reported on the subcommittee that met on February 18 to discuss SB 406 and HB 211. They agreed on a couple of principles that they wanted to operate under. These two bills deal with the default supplier. Default supplier is someone who would take care of individuals in Montana Power territory that does not choose a provider by July 1, 2002 or earlier. One principle was that the Public Service Commission will continue to make the decisions as to who will be the default supplier or suppliers. The second principle was to leave the door open so that there can be more than one default supplier. There are amendments that were put together **EXHIBIT (bus41a12)**. **Debbie Smith, Natural Resources Defense Council, and Ed Bartlett, Montana Power Company,** worked together to come to a consensus on the amendments for this bill of **SEN. STEVE DOHERTY**.

Mr. Bartlett presented the main points of the amendments. There were six or so people present after the subcommittee meeting who put these consensus amendments together. They focused on concerns over the Bonneville Power Administration and recognizing that at the state level, we couldn't affect that. All parties were concerned on how to handle this. They were making sure that, consistent with **REP. ROYAL JOHNSON'S** bill, there was recognition that the Public Service Commission would make the determination of whom would be the default provider or providers. The group recognized that the normal rate making treatment of the PSC should not apply to this default provider or providers. There were changes throughout concerning rate making authority to either "equitable or fair".

SEN. MCCARTHY said the amendments were lengthy because of adding an "s" to provider and they also took out "just and reasonable" in a number of places. Basically, much was clean-up language.

SEN. DALE BERRY asked if there would be amendments to **HB 211**?

SEN. THOMAS said that there would be some amendments in that regard that falls along the same line of how many suppliers. The intent is not to have **SB 406** conflict with **HB 211**.

Mr. Campbell asked **Ms. Smith** to look at No. 16 of the amendments. An insert has been put in at this point. On No. 17 there is a sentence deleted following the same (1)(a). The question now is what is to be done with the two sentences in No. 16 following (1)(a)? Do these two questions come before or after the deleted sentence?

Ms. Smith said that she would help in straightening out the amendments if there would be questions. It has been difficult without having a gray bill.

{Tape : 1; Side : B; Approx. Time Counter : 42.8}

Mr. Campbell suggested that all concerned should look at the bill with amendments carefully at the second reading to make sure that all has been put together properly.

SEN. THOMAS said that on these amendments there may be a correction or two as the committee moves through the bill. Many people could say there is no reason at this time for either of these bills. A default supplier is not needed right now. The reason that this bill should go forward is that there may be a potential setting up and garnering some less expensive BPA power on the market that would be used down the road. The other bill allows the cities and towns to work on what they have already begun. He did have a couple more amendments if this first set of amendments were passed.

SEN. ROUSH said that this bill should be sent to the Senate Floor as clean as possible. He hoped that no amendments would be moved on the Senate floor.

SEN. SPRAGUE asked **SEN. THOMAS** if he would support **HB 211** with some amendments. **SEN. THOMAS** said "yes," he would.

SEN. HERTEL said that it seemed impossible for these two bills to be melded together. There were actually two different issues.

Motion/Vote: **SEN. THOMAS** moved that **SB 406 BE AMENDED**. Motion carried unanimously. 7-0

{Tape : 2; Side : A; Approx. Time Counter : 0}

SEN. THOMAS moved that SB 406 BE FURTHER AMENDED by striking lines 14 through 18 on page 1 of the bill.

Discussion: **SEN. THOMAS** said that the "WHEREAS, competitive retail marketsnot yet developed; and" while it is true it is not a problem. That is not to have been done yet and should not be stated here. With the transition process, that is not in line. The next one "WHEREAS, evidence from other states thatfor a significant period of time; and" is not really true either. For those reasons he would like them removed from the bill. This bill is designed to try and bring as economical power to Montana as possible. These two statements are not specifically true and should not be stated.

SEN. MCCARTHY said that the subcommittee and the parties that were in attendance were in agreement.

Vote: Motion that SB 406 BE AMENDED, by striking line 14 through line 18 on page 1, carried unanimously. 7-0

Motion: **SEN. THOMAS** moved that the original amendments to SB 406 BE AMENDED by striking the word "cost-based" from Number 8.

SEN. THOMAS asked **Gary Wiens of MT Electric Cooperatives Assoc.** to speak to this amendment. The word "cost-based" reference in the original set of amendments (No. 8).

Mr. Wiens said that he thinks that the word "cost-based" is used only one time. They do have a concern with the use of this word. First, it is unnecessary because it states in the "Whereas" that the residents of Montana have access to the benefits of federal power and it should flow to the State of Montana." That would encompass any kind of power that power agencies could or may offer to all Montana customers. "Cost-based" is known in our business as "preference power". Preference power is something that is given to municipalities and cooperatives in the U.S. and was given to them in return for their agreeing to help pay for construction of these federal facilities. Congress has repeatedly reaffirmed preference power to these groups. To use "cost-based" is a contradiction of the policy of the federal government.

Vote: Motion that the original amendments of SB 406 BE AMENDED, by striking the word "cost-based" in No. 8, carried unanimously. 7-0

Motion: SEN. THOMAS moved that the original amendments of SB 406 BE AMENDED in No. 30, subsection (7).

Discussion: Mr. Alec Hanson, League of Cities and Towns, said this particular section includes the limitations on what default suppliers may not do. This might apply to other things that cities and towns are currently engaged in. If this is not clarified it may prevent a city or town from acting as a default supplier. If the committee would agree to a conceptual amendment in that these restrictions apply only to cities and towns when they are acting in the capacity as a default supplier and not in their normal business operations. Cities and towns do offer for sale other products such as water, sewer, garbage, etc. and technically if this language stays in without clarification, it could preempt them from participating as a default supplier.

SEN. HERTEL asked Mr. Hanson for wording that would be acceptable. Mr. Hanson said to add something like this: nothing in subsection (7)(a) prevents a local government utility from providing supply service to its local governmental customer accounts.

Vote: Motion that the original amendments of SB 406 BE AMENDED in No. 30, subsection (7) to add "nothing prevents a local government utility from providing supply service to its local governmental customer accounts", carried unanimously. 7-0

Mr. Campbell again said that all parties concerned should look carefully over the bill when it is amended to make sure that it fit the intent since he has so many bills and amendments to finish by late today.

Motion/Vote: SEN. MCCARTHY moved that SB 406 DO PASS AS AMENDED. Motion carried unanimously. 7-0

(A final copy of the edited amendments of this bill can be found in the "Standing Committee Report".)

{Tape : 2; Side : A; Approx. Time Counter : 10.1}

AMENDMENTS TO SENATE BILL NO. 406
PROPOSED BY THE MONTANA POWER COMPANY

2/18/99

1. Page 1, line 8.
Strike: "A"
Insert: "ONE OR MORE"
2. Page 1, line 8.
Strike: "SUPPLIER"
Insert: "SUPPLIERS"
3. Page 1, line 13.
Strike: "just and reasonable"
Insert: "equitable"
4. Page 1, line 17-18.
Strike: "not develop for a significant period of time"
Insert: "take longer than the transition period to develop"
5. Page 1, line 20.
Strike: "just and reasonable"
Insert: "equitable"
6. Page 1, line 22.
Strike: "entity"
Insert: "or more default suppliers"
7. Page 1, lines 28 and 29.
Strike: lines 28 and 29 in their entirety.
8. Page 2.
Following: line 2
Insert: "WHEREAS, the State of Montana desires that its residents have access to the benefits of competitive retail electricity markets and federal Power Marketing Administration ~~cost-based electricity~~; and"

L-14-18

WHEREAS, federal Power Marketing Administration power or benefits should be distributed as widely and equitably as possible among small customers of open-access public utilities in the State of Montana in a manner that promotes efficient development and operation of the competitive retail electricity markets; and"
9. Page 2, line 23.
Strike: "the"
Insert: "a"
10. Page 23.

Following: line 28

Insert: Section 34. Section 69-8-201, MCA, is amended to read:

69-8-201. Public utility-transition to customer choice-waiver.

(1) A public utility shall, except as provided in this section, adhere to the following deadlines:

(a) On or before July 1, 1998, all customers with individual loads greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts or greater must have the opportunity to choose an electric supplier.

(b) Subject to subsection (2), and as soon as is administratively feasible but before July 1, 2002, all other public utility customers must have the opportunity to choose an electric supplier.

(2) (a) Except as provided for in subsection (3), the commission may determine that additional time is necessary for customers identified in subsection (1)(b); however, the implementation of full customer choice may not be delayed beyond July 1, 2004.

(b) A determination by the commission that additional time is necessary for subsection (1)(b) customers must be made at least 60 days in advance of the scheduled date and must be based on one or more of the following considerations:

(i) implementation would not be administratively feasible;

(ii) implementation would materially affect the reliability of the electric system; or

(iii) Montana customers or electricity suppliers would be disadvantaged due to lack of a competitive electricity supply market.

(3) The commission shall designate the public utility or one or more default suppliers, pursuant to [section 37], to provide regulated default service for those small customers of a public utility who are not being served by a competitive supplier, until the commission determines that a competitive market exists.

~~(3)(4)~~ Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, and 69-8-402, a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, may:

(a) defer compliance with this chapter until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory, except that the public utility shall file a transition plan pursuant to 69-8-202 to provide transition to customer choice on or before July 1, 2002, and must have completed the transition to customer choice by July 1, 2006; and

(b) petition the commission to delay the public utility's transition plan filing until July 1, 2004.

~~(4)(5)~~ Upon request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of 69-8-104, 69-8-202 through 69-8-204, 69-8-208 through 69-8-211, 69-8-402, and this section.

Renumber: subsequent sections.

11. Page 24, line 6 and 7.
Strike lines 6 and 7 in their entirety.

12. Page 25, line 5.
Strike: "the the"
Insert: "one or more"
13. Page 25, line 5.
Strike: "supplier"
Insert: "suppliers"
14. Page 25, line 6.
Strike: "have not"
Insert: "are not being served by a competitive supplier"
15. Page 25, line 7.
Delete: "been assigned ~~an electricity~~ to an alternative default supplier"
16. Page 26, line 9.
Strike: "license"
Insert: "Licenses and Obligation to Serve. (1)(a) A default supplier shall be obligated to provide a single electric supply service to all small customers of a public utility who are not being served by a competitive supplier. A default supplier may also offer an additional electric supply service that will include a component of renewable energy. A default supplier will offer no other supply services, unless the default supplier forms a separate entity."
17. Page 26, line 9-11.
Following: (1)(a)
Strike: "A person may submit an application to the commission to become the default supplier for the small customers of a public utility whose customers have access to choice of an electricity supplier."
18. Page 26, line 11.
Strike: "only"
Insert: "or more"
19. Page 26, line 11.
Strike: "supplier"
Insert: "suppliers"
20. Page 26, line 14 and 15.
Strike: "All small customers of a distribution utility must be offered electricity supply service by the default supplier until"
Insert: "Until"
21. Page 26, line 16.
Following: "customers"
Insert: ". a default supplier remains"

22. Page 26, line 18.
Following: (2)
Insert: "A person may submit an application to the commission to become a default supplier for those small customers of a public utility who are not being served by a competitive supplier. In considering the applications for default supplier, the commission must consider the impact of having more than one default supplier on the small customers in the aggregate."
23. Page 26, line 18-20.
Strike: lines 18-20 in their entirety
Renumber subsequent subsections
24. Page 26, line 21.
Strike: "the" before default supplier
Insert: "a"
25. Page 26, line 21.
Following: "supplier"
Insert: "or the public utility, if a default supplier is not chosen or is revoked, pursuant to [section 38]."
26. Page 26, line 21 and 22.
Strike: "just and reasonable and"
Insert: "fair and fully recovers all costs of providing default supply service. The commission"
27. Page 26.
Following: line 27
Insert: "(4) The commission shall ensure that federal Power Marketing Administration power or benefits acquired by a default supplier is distributed as widely and equitably as possible among small customers in a manner that promotes efficient development and operation of the competitive retail electricity markets.
Renumber: Subsequent subsections.
28. Page 26, line 28.
Strike: "the" before default supplier
Insert: "a"
29. Page 26, lines 29 and 30.
Strike: "The default supplier also may offer other supply choices to customers that affirmatively opt out of the rate moratorium."
30. Page 26
Following: line 30
Insert: (6) A default supplier will have the following additional duties:

- (a) it must educate its customers regarding choice;
- (b) it will not advertise or promote its default supplier service, however, it may educate its customers about default supply service;
- (c) it will not discount its commission-approved rates to retain or gain customers;
- (d) it will not obligate customers to a contractual term of service; and
- (e) it will provide information to customers about alternative competitive suppliers of energy services.

(7) A default supplier may not:

- ~~Adding~~ (a) construct, purchase, take, receive, lease, or otherwise acquire or own, hold, equip, maintain, or operate electric generating plants or transmission or distribution lines or systems, except that a default supplier may enter into transmission or distribution agreements for the use of capacity on transmission and distribution systems;
- (b) purchase electricity for or sell electricity to commercial or industrial electric consumers having accounts possessing an aggregated monthly peak greater than 100 kilowatts; or
- (c) offer for sale any products other than electricity supply.

Renumber: subsequent subsection.

- 31. Page 27, line 1.
Following: "section"
Insert: "and [section 38], including rules governing the default supplier application process and determining the length of default supplier status. The commission rules must provide for allowing the public utility and other interested persons to participate."
- 32. Page 27, line 5.
Strike: "the" before default supplier
Insert: "a"
- 33. Page 27, line 7.
Following: "person."
Insert: "The public utility must be given sufficient notice to acquire supply to serve this load, and shall fully recover its additional costs in providing this service."

DATE 2-19-99

[illegible]



SENATE STANDING COMMITTEE REPORT

February 20, 1999

Page 1 of 6

Mr. President:

We, your committee on **Business and Industry** report that **Senate Bill 406** (first reading copy -- white) **do pass as amended.**

Signed:

Sen. J. Hertel
Senator John Hertel, Chair

And, that such amendments read:

1. Title, page 1, line 8.

Strike: "A"

Insert: "ONE OR MORE"

Strike: "SUPPLIER"

Insert: "SUPPLIERS"

2. Title, page 1, line 9.

Following: "69-8-103,"

Strike: "69-8-203,"

Insert: "69-8-201,"

3. Page 1, line 13.

Strike: "just and reasonable"

Insert: "equitable"

4. Page 1, line 14 through line 18.

Strike: lines 14 through 18 in their entirety

5. Page 1, line 20.

Strike: "just and reasonable"

Insert: "equitable"

6. Page 1, line 22.

Committee Vote:

Yes 7, No 0.

421021SC.srf

gro

Strike: "entity"

Insert: "or more default suppliers"

7. Page 1, line 28 through line 29.

Strike: lines 28 and 29 in their entirety

8. Page 2, following line 2.

Insert: "WHEREAS, the state of Montana desires that its residents have access to the benefits of competitive retail electricity markets and federal Power Marketing Administration electricity; and

WHEREAS, federal Power Marketing Administration power or benefits should be distributed as widely and equitably as possible among small customers of open-access public utilities in the state of Montana in a manner that promotes efficient development and operation of the competitive retail electricity markets; and"

9. Page 2, line 23.

Strike: "the"

Insert: "a"

Strike: "36"

Insert: "37"

10. Page 6, line 30.

Strike: "36"

Insert: "37"

11. Page 23, line 29 through page 24, line 12.

Strike: section 34 in its entirety

Insert: "Section 34. Section 69-8-201, MCA, is amended to read:

"69-8-201. **Public utility -- transition to customer choice -- waiver.** (1) A public utility shall, except as provided in this section, adhere to the following deadlines:

(a) On or before July 1, 1998, all customers with individual loads greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts or greater must have the opportunity to choose an electricity supplier.

(b) Subject to subsection (2), and as soon as is administratively feasible but before July 1, 2002, all other public utility customers must have the opportunity to choose an electricity supplier.

(2) (a) Except as provided for in subsection (3), the commission may determine that additional time is necessary for customers identified in subsection (1)(b); however, the implementation of full customer choice may not be delayed beyond

July 1, 2004.

(b) A determination by the commission that additional time is necessary for subsection (1)(b) customers must be made at least 60 days in advance of the scheduled date and must be based on one or more of the following considerations:

(i) implementation would not be administratively feasible;
(ii) implementation would materially affect the reliability of the electric system; or

(iii) Montana customers or electricity suppliers would be disadvantaged due to lack of a competitive electricity supply market.

(3) The commission shall designate the public utility or one or more default suppliers, pursuant to [section 37], to provide regulated default service for those small customers of a public utility that are not being served by a competitive supplier, until the commission determines that a competitive market exists.

(3) Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, and 69-8-402, a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, may:

(a) defer compliance with this chapter until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory, except that the public utility shall file a transition plan pursuant to 69-8-202 to provide transition to customer choice on or before July 1, 2002, and must have completed the transition period to customer choice by July 1, 2006; and

(b) petition the commission to delay the public utility's transition plan filing until July 1, 2004.

(4) Upon a request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of 69-8-104, 69-8-202 through 69-8-204, 69-8-208 through 69-8-211, 69-8-402, and this section."

12. Page 25, line 5.

Strike: "the the"

Insert: "one or more"

Strike: "supplier"

Insert: "suppliers"

13. Page 25, line 6.

Strike: "have not"

Insert: "are not being served by a competitive supplier"

14. Page 25, line 7.

Strike: "been" through "supplier"

15. Page 26, line 9.

Strike: "license"

Insert: "licenses and obligation to serve"

16. Page 26, line 9 through line 11.

Strike: "A" on line 9 through "supplier." on line 11

Insert: "A default supplier is obligated to provide a single electric supply service to all small customers of a public utility who are not being served by a competitive supplier. A default supplier may also offer an additional electric supply service that will include a component of renewable energy. A default supplier may not offer other supply services unless the default supplier forms a separate entity."

17. Page 26, line 11.

Strike: "only"

Following: "one"

Insert: "or more"

Strike: the second "supplier"

Insert: "suppliers"

18. Page 26, line 13.

Following: "as"

Strike: "the"

Insert: "a"

19. Page 26, line 14 through line 15.

Strike: "All" on line 14 through "until" on line 15

Insert: "Until"

20. Page 26, line 16.

Following: "customers"

Insert: ", a default supplier's obligation to serve remains"

Following: "commission"

Strike: "must"

Insert: "shall"

21. Page 26, line 18 through 20.

Strike: "The" on line 18 through "participate." on line 20

Insert: "A person may submit an application to the commission to become a default supplier for those small customers of a public utility who are not being served by a competitive

supplier. In considering the applications for default supplier, the commission shall consider the impact of having more than one default supplier on the small customers in the aggregate."

22. Page 26, line 21.

Following: "by"

Strike: "the"

Insert: "a"

Following: "supplier"

Insert: "or the public utility, if a default supplier is not chosen or is revoked pursuant to [section 38],"

23. Page 26, line 21 through line 22.

Strike: "just" on line 21 through second "and" on line 22

Insert: "fair and fully recovers all costs of providing default supply service. The commission"

24. Page 26, following line 27.

Insert: "(4) The commission shall ensure that federal power marketing administration power or benefits acquired by a default supplier are distributed as widely and equitably as possible among small customers in a manner that promotes efficient development and operation of the competitive retail electricity markets."

Renumber: subsequent subsections

25. Page 26, line 28.

Following: ", "

Strike: "the"

Insert: "a"

26. Page 26, line 29 through line 30.

Strike: "The" on line 29 through "." on line 30

27. Page 26, following line 30.

Insert: "(6) A default supplier has the following additional duties:

(a) It shall educate customers regarding choice.

(b) It may not advertise or promote its default supplier service; however, it may educate its customers about default supply service.

(c) It may not discount its commission-approved rates to retain or gain customers.

(d) It may not obligate customers to a contractual term of service.

(e) It shall provide information to customers about alternative competitive suppliers of energy services.

(7) (a) A default supplier may not:

(i) construct, purchase, take, receive, lease, or otherwise acquire or own, hold, equip, maintain, or operate electric generating plants or transmission or distribution lines or systems, except that a default supplier may enter into transmission or distribution agreements for the use of capacity on transmission and distribution systems;

(ii) purchase electricity for or sell electricity to commercial or industrial electric consumers having accounts possessing an aggregated monthly peak greater than 100 kilowatts; or

(iii) offer for sale any products other than electricity supply.

(b) Nothing in subsection (7)(a) prevents a local government utility from providing supply service to its local governmental customer accounts."

Renumber: subsequent subsection

28. Page 27, line 1.

Following: "section"

Insert: "and [section 38], including rules governing the default supplier application process and determining the length of default supplier status. The commission rules must provide for allowing the public utility and other interested persons to participate"

29. Page 27, line 7.

Following: "."

Insert: "The public utility must be given sufficient notice to acquire supply to serve this load and shall fully recover its costs in providing this service."

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By CHAIRMAN TOM ZOOK, on March 26, 1999 at 8:00 A.M., in Room 312 - 2 Capitol.

ROLL CALL

Members Present:

Rep. Tom Zook, Chairman (R)
Rep. Joe Quilici, Vice Chairman (D)
Rep. Steve Vick, Vice Chairman (R)
Rep. Beverly Barnhart (D)
Rep. Ernest Bergsagel (R)
Rep. Peggy Bergsagel (R)
Rep. Rosalie (Rosie) Buzzas (D)
Rep. John Cobb (R)
Rep. Stan Fisher (R)
Rep. Dick Haines (R)
Rep. Royal Johnson (R)
Rep. Betty Lou Kasten (R)
Rep. Matt McCann (D)
Rep. Red Menahan (D)
Rep. Ray Peck (D)
Rep. Lila Taylor (R)
Rep. Joe Tropila (D)
Rep. John Witt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Joanne Gunderson, Committee Secretary
Taryn Purdy, Legislative Fiscal Division

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. The minutes were recorded on a BI-85 recorder; references are measured in inches rather than minutes.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 406, SB 448, SB 467,
3/22/1999

HEARING ON SB 406

Opening Statement by Sponsor:

Sen. Steve Doherty, SD 24, presented SB 406.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 96}

Proponents' Testimony:

Commissioner Bob Anderson, Public Service Commission EXHIBIT(1)

{Tape : 1; Side : A; Approx. Time Counter : 96 - 209}

Bill Drummond, Western Montana GMT

{Tape : 1; Side : A; Approx. Time Counter : 209 - 323}

Debbie Smith, Natural Defense Support Council

EXHIBIT(2)

{Tape : 1; Side : A; Approx. Time Counter : 323 - 398}

Jack Haffey, Montana Power Company

EXHIBIT(3)

{Tape : 1; Side : A; Approx. Time Counter : 398 - 499} EXHIBIT(4)

Jeff Barber, MEIC

{Tape : 1; Side : B; Approx. Time Counter : 4 - 21}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 21 - Tape : 2; Side : B; Approx. Time Counter : 15; Comments : Gail Kuntz referred to Exhibit 5 during the question and answer period.} EXHIBIT(5)

Closing by Sponsor:

{Tape : 2; Side : B; Approx. Time Counter : 15 - 88}

HEARING ON SB 467

Opening Statement by Sponsor:

Sen. Sue Bartlett, SD 27, presented SB 467.

{Tape : 2; Side : B; Approx. Time Counter : 88 - 163}

Proponents' Testimony:

Kate Cholewa, Montana Women's Lobby

EXHIBIT(6)

{Tape : 2; Side : B; Approx. Time Counter : 163 - 225}

Wendy Young, Coping With Block Grants Projects

EXHIBIT(7)

{Tape : 2; Side : B; Approx. Time Counter : 225 - 294}

Public Service Commission's Amendments to
Senate Bill 406

House Appropriations Committee Hearing
March 26, 1999

1. Lines 3 and 4.

Following: "income taxes"

Insert: ", other than any applicable fees to fund the
Montana consumer counsel and the public service commission as
provided in Title 69, chapter 1, parts 2 and 4"

Section 32, as amended, would read as follows:

NEW SECTION. Section 32. Exemption from taxes. Buying
cooperatives transacting business in this state pursuant to [sections 1
through 32] are exempt from all excise and income taxes, other than any
applicable fees to fund the Montana consumer counsel and the
public service commission as provided in Title 69, chapter 1,
parts 2 and 4.

SB 406

**A Bill to Authorize the Formation of Electricity Buying Cooperatives
and to Establish a Process for Designating Electricity Default Suppliers
for Small Customers**

Bill Description

1. Allows for formation of electricity buying cooperatives to provide electrical supply service to residential and small business customers within a public utility's service territory that is open to small-customer choice of supplier, i.e., MPC's service territory.
 - Does not apply to rural electric coops or to public utilities whose distribution systems are not yet open to small-customer choice of supplier (such as MDU).
2. Allows any person or entity, including a buying cooperative, a local government, or a private corporation, to compete for default supplier status in MPC's service territory. The Public Service Commission will determine the number of default suppliers that will operate in the service territory, and who those default suppliers will be.
 - Allows another entity, or entities, to step into the shoes of Montana Power Company, for example, in terms of providing electrical supply-service only.
3. Requires a default supplier to comply with terms and procedures established in the bill.
 - Provides uniform rules and a level playing field for every default supplier to meet, regardless of the type of entity it is (e.g., the public utility, a buying cooperative, a municipality or other local government, or a private corporation).

Why Does Montana Need This Now?

1. The bill improves the chances of small customers avoiding significant rate increases following the transition period by allowing them potentially to access power from the federal hydropower system power at the least expensive rates - an opportunity that was not available before last session's utility restructuring law was enacted.
 - One of the primary goals of SB 390 was to allow *all* customers to benefit from access to alternative supply sources and to enjoy lower electricity rates. Passage of this bill this session will maximize the chances of Montana securing the greatest access to Bonneville system hydropower at the most preferential rates in the future.
2. The bill establishes a safety net for small electricity customers by requiring that default service be provided until workable competition has developed for that market.
 - The public utility is designated the default supplier if no other entities qualify to receive default-supplier status.
3. The bill does not inhibit full retail competition from developing - it simply allows other entities to step into the shoes of Montana Power Company to provide default supply to small customers.
4. The bill is neutral concerning taxation of generation, transmission, and consumption of electricity.

Testimony of Jack Haffey
On behalf of The Montana Power Company
Regarding SB 406
March 26, 1999

EXHIBIT 3
DATE 3/26/99
SB 406

Introduction:

SB 406 has two main objectives:

- 1) to provide authority for the Montana Public Service Commission to create a default provider for the transition period and beyond, and
- 2) to create an entity that would qualify for federal Power Marketing Administration power from BPA.

Montana Power agrees with and supports these objectives as long as they do not undermine the objective of the Electric Restructuring Act (SB 390), which is to develop competition for electric supply in Montana. The amendments proposed by Montana Power go a long way to protect the mandate of SB 390.

Why not simply rely on SB 390? Why is SB 406 necessary?

SB 390 contemplated that the utility would continue to serve its customers that have not yet made a choice of competitive electricity supplier until the end of the transition period. The Public Service Commission has the authority under SB 390 to continue the transition period to 2004. If SB 406 does not pass, then MPC will provide this service until the end of the transition period.

SB 390 requires the utility to propose a method in its transition plan for assigning customers that have not chosen an electricity supplier by the end of the transition period to an electricity supplier. SB 390 does not clearly provide the Commission with authority to allow another entity to be a default supplier either during or after the transition period. SB 406 is necessary to provide this explicit authority to the Commission.

Further, SB 390 did not provide for an entity that would qualify for federal hydro power. SB 406 allows for the creation of buying cooperatives, which are non-profit entities, a requirement of BPA. It is absolutely necessary that the Legislature provide for such an entity during this session, so that the entity may compete for BPA preference power during the upcoming subscription period. The power will be gone if the legislature waits for the next session. MPC cannot purchase the same quality or quantity of BPA power that a buying cooperative may purchase if it qualifies.

Then, why not pass a bill that creates a buying cooperative and hold off on the default supplier part of the bill until it is really necessary?

The main reason is that the buying cooperative must have some obligation to serve a load for it to qualify for BPA power. If the buying cooperative were chosen by

the Commission to be a default supplier, it would have the obligation to serve those customers the Commission assigns to it. Without both parts of SB 406, the Commission would not have explicit authority to choose a default supplier before the transition period and, without the default supplier load, the buying cooperative would not be eligible for BPA power.

Why not give the Commission general authority to create a default supplier in whatever manner is determined to be in the public interest through a rulemaking?

Although some of the parties that have helped negotiate the language of this bill would agree to create general authority in the Commission, Montana Power strongly opposes such an approach. It is our belief that the legislature should define the policy surrounding the default provider as the default provider will be a significant provider of electricity supply service for small customers for several years.

Montana Power believes the default supplier(s) should be created with the following general principles in mind:

1. A default supplier should have an **obligation to serve** all small customers that are not being served by a competitive electric supplier for whatever reason. The residential and small commercial customers are the least likely to have valid choices for supply service in the near future.
2. A default supplier **should not compete for customers** but should be created to promote competition, which would gradually replace the need for a default supply service. To promote competition, a default supplier should:
 - a. engage in only a single supply service, plus a green service, if it chooses;
 - b. not be allowed to engage in other energy services, including transmission or distribution services;
 - c. provide equitable service to all customers on a distribution system;
 - d. not have advantages that would create a "supercompetitive" entity with which competitive electricity suppliers could not compete;
 - e. be required to educate and provide customers with information about the competitive market.

These requirements were placed on Montana Power as the default provider to encourage competition by the end of the transition period. The requirements are necessary to promote competition. If not implemented for the default supplier, SB 390 will be undermined and competition will not have a chance of developing in Montana.

Why does Montana Power have additional amendments to this bill?

Montana Power does not believe that the bill passed by the Senate sufficiently protects competition. Montana Power testified at the Senate committee hearing that it supported the bill if amended to protect competition. MPC worked with the bill drafter and others to draft amendments that would accomplish MPC's goal. However, after two

days of negotiation, we could not come up with a remedy that would accomplish MPC's goal of keeping the hope of competition alive while creating an entity that would qualify for BPA power.

Since then we have. MPC's amendments would do several things.

1. They would allow that a buying cooperative can only do business if chosen as a default supplier. This is in keeping with SB 390, which states that a rural cooperative must create a for-profit entity if it chooses to compete for customers in MPC's service territory. Buying cooperatives should not be allowed to circumvent this requirement unless they are a default supplier.
2. If a buying cooperative is chosen as the default supplier and if it is able to procure BPA power, then the commission should have jurisdiction over the purchase and distribution of the BPA power.
3. The amendments would allow the Commission to require that the BPA benefits be spread to all MPC's small distribution customers at a rate separate from that of the default supply service, as long as BPA rules did not prohibit it. This would allow all small customers to benefit from the BPA purchase, while being able to purchase the rest of their supply on the competitive market. Further, keeping the BPA power recovery separate from the default supply service rate prevents the default supply from becoming so low priced that other suppliers cannot compete.
4. Finally, some amendments change the definition of small customers to one that is more administratively manageable for MPC.

Do MPC's amendments cause the buying cooperative to be ineligible for the BPA power?

The biggest concern seems to be with BPA's requirement that the entity it sells to either owns or has an ownership-like lease of poles and wires to its end use customers. SB 406, since it was first introduced, has envisioned an entity that only sells electricity supply. MPC's amendments include providing the opportunity for the buying cooperative to the "lease or use of capacity" on MPC's transmission and distribution systems. However, the general prohibition from leasing the transmission and distribution systems outright is still in the bill. Even if the prohibition from leasing were removed from Sections 6 and 37(8), other parts of the bill do not allow the buying cooperative or any default supplier to provide distribution service. Nor should it. SB 390 set up the structure that Montana should follow in its restructuring efforts. It provided for open access service on transmission and distribution that will allow suppliers to get power to their end use customers.

Another concern does come from MPC's amendments. Some are concerned that the effort to separate the BPA power from the rest of the default supply service will not meet BPA's obligation to serve requirements. However, this separation is the only way that competition has a chance of being protected with the creation of this buying cooperative entity and is absolutely essential. MPC does not support SB 406 if the separation is not maintained explicitly. We believe that the purchase of BPA power

should not come at the expense of competition. We believe that the legislature should make that choice as well.

Thank you for this opportunity to express our opinions to this Committee.

SUMMARY OF MPC'S AMENDMENTS

EXHIBIT 4
DATE 3/26/99
SB 406

The amendments fall into four categories, which follow:

1. The amendments to Sections 3 and 4 allow a buying cooperative to have a single purpose, that of providing default supplier service. The default supplier service and the purchase and distribution of BPA power by the default supplier buying cooperative is under the jurisdiction of the Public Service Commission.
 - 29 amendments relate to this change
2. The amendment to Section 37(4) requires that the benefits or costs of the BPA be recovered or distributed to customers separately from the default supplier rate.
 - two other amendments are related
3. An amendment provides that the Transition Advisory Committee will decide when there is no further need for a default supplier. There are several related changes to SB 390, which remove the requirement for the Commission to make a determination about when a competitive market exists.
 - 3 of the amendments relate to this change
4. The remaining changes are clarification or cleanup of language and intent that was already included in the previous bill and includes the following:
 - a. changing the definition of small customers for ease in administration
 - b. adding "new" to the word renewables
 - c. allowing an exception to the prohibition on the ownership of lines and poles that would allow for the lease or use of capacity on the transmission or distribution service
 - d. removing Section 35 which means that Section 69-8-210 of SB 390 is not deleted
 - e. inserting electricity before supplier in keeping with the definitions already in SB 390
 - f. other

1. Title, line 6.

Strike: "BUSINESS"

Insert: "COMMERCIAL"

2. Title, line 10

Strike: "69-8-210"

3. Page 2, line 24

Strike: "business"

Insert: "commercial"

4. Page 2, lines 24 and 25

Strike: "the accounts of a commercial customer whose aggregated load is a monthly peak of 100 kilowatts or less."

Insert: "individual accounts of a commercial customer with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts."

5. Page 2, line 26

Strike: "business"

Insert: "commercial"

6. Page 2, line 29 through page 3, line 3

Strike: "Exemption from jurisdiction"

Insert: "Jurisdiction"

Following: "commission."

Strike: remainder of line 29 through page 3, line 3

Insert: "The public service commission has jurisdiction to choose and regulate the buying cooperative(s) that may obtain a default supplier license as provided in [section 37]. If a buying cooperative that has obtained a default supplier license has the opportunity to obtain federal Power Marketing Administration power, the public service commission will also have jurisdiction over the purchase and distribution of that power as provided in [section 37]."

8. Page 3, line 6

Following: " chapter"

Insert: "only"

9. Page 3, lines 6 and 7

Strike: "residential customers and small business customers of a distribution utility"

Insert: "small customers as a default supplier, pursuant to [section 37]."

10. Page 3, line 11

Following: "(2) have"

Strike: "perpetual"

Following: "existence"

Insert: "for as long as it may serve its purpose"

11. Page 3, line 13 through line 23

Strike: subsection (4)

Renumber: subsequent subsections

12. Page 3, line 30

Following: "systems"

Insert: ", except that a buying cooperative may enter into transmission or distribution agreements for the lease or use of capacity on transmission and distribution systems;"

13. Page 4, line 2

Strike: "accounts possessing an aggregated monthly peak greater than 100 kilowatts"

Insert: "individual accounts with an average monthly demand in the previous calendar year of 100 kilowatts or more or a new commercial or industrial customer with an estimated average monthly demand of 100 kilowatts or more;"

14. Page 4, lines 22 and 23

Following "individuals"

Strike: "or two or more buying cooperatives"

15. Page 7, line 3

Following "to"

Strike: "residential customers and small business"

Insert: "small"

15. Page 7, lines 3 and 4

Following: "distribution utility"

Strike: ", and to other buying cooperatives."

16. Page 7, lines 6 and 7

Following "commission"

Strike: "upon approval of a default suppliers license"

17. Page 8, line 28

Following: "cooperative"

Strike: "or of another buying cooperative that is a member of the buying cooperative"

18. Page 9, line 20

Following: "incorporation"

Strike: ", consolidation, merger, or conversion"

19. Page 11, line 16

Following "capital;"

Insert: "and"

20. Page 11, line 19

Following: "Fiscal year;"

Strike: "and"

21. Page 11, lines 19 through 22

Strike: subsection (f) in its entirety

22. Page 12, line 26

Following: "notice."

Insert: "; and"

23. Page 12, lines 27 through 29
Strike: subsection (c) in its entirety

24. Page 12, line 30
Strike: "(d)"
Insert: "(c)"

25. Page 13, lines 4 and 5
Strike: subsection (5) in its entirety

26. Page 13, lines 7 through 13
Strike: Section 25 in its entirety

27. Page 13, line 15 through page 14, line 18
Strike: Section 26 in its entirety

28. Page 14, line 20 through page 15, line 24
Strike: Section 27 in its entirety

29. Page 15, line 26 through page 16, line 28
Strike: Section 28 in its entirety

30. Page 17, line 9 and 10
Following: "money"
Strike: "and that all easements have been released to the grantors"

31. Page 19, line 16
Following: "amendment,"
Strike: "consolidation, merger, conversion,"

32. Page 19, line 17
Following: "amendment,"
Strike: "consolidation, merger, conversion,"

33. Page 19, line 26
Strike: "consolidation, merger, conversion,"

34. Page 22, lines 5 and 6
Following: "or a small"
Strike: "business customer who has accounts possessing an aggregated monthly peak of 100 kilowatts or less"
Insert: "commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts, of a public utility distribution services provider that has opened access on its distribution system pursuant to this Act."

35. Page 24, line 29
Strike: "(3)"
Insert: "(4)"

36. Page 25, line 11

Following: "competitive"

Strike: "supplier, until the commission determines that a competitive market exists"

Insert: "electricity supplier. The transition advisory committee shall review and address the need for continued default supply service and make recommendations to the 58th legislature"

37. Page 25, line 25 to page 26, line 9

Strike: Section 35 in its entirety

38. Page 26, line 15

Following: "procured"

Insert: "as provided in [section 37], i)

39. Page 26, line 16

Following: "suppliers"

Insert: "for those customers that are not being served by a competitive supplier;

40. Page 26, line 16

Strike: "or"

Insert: "ii)"

41. Page 26, line 17

Following: "competitive"

Insert: "electricity"

42. Page 26, line 19

Strike: "as provided in [section 37]"

Insert: "or iii) by the buying cooperative(s) from the federal Power Marketing Administration for small customers.

43. Page 26, line 25 through page 27, line 27

Strike: subsection (2) in its entirety

Renumber: subsequent subsections

44. Page 27, line 20

Strike: "(a)"

45. Page 27, line 22

Strike: "A"

Insert: Except as provided in [section 37(4)), a"

46. Page 27, line 24

Following: "competitive"

Insert: "electricity"

47. Page 27, line 24

Following: "supplier"

Insert: "or another default supplier. To supply the default supply service during the transition period, the default supplier(s) will purchase its supply requirements from the distribution utility, if available, at a price that is the same as the distribution utility would recover in its rates for the same supply component if it were the default provider, except to the extent that the supply is displaced by federal Power Marketing Administration power or by new renewable energy."

48. Page 27, line 25

Following: "component of"

Insert: "new"

49. Page 27, line 25

Strike: "A default supplier may not offer other supply services unless the default supplier forms a separate entity."

50. Page 27, line 30 to page 28, line 4

Strike: subsection (b) in its entirety

51. Page 28, line 9

Following: "competitive"

Insert: "electricity"

52. Page 28, line 13

Following: "not chosen or"

Insert: "its license"

53. Page 28, line 24

Following: "markets."

Insert: "The full costs or benefits of federal Power Marketing Administration power shall be recovered or distributed to customers separately from the rate for default supplier service."

54. Page 28

Insert: "NEW SUBSECTION. Subsection (5) The commission may assign, from a public utility distribution provider to a default supplier(s) that has purchased or received federal Power Marketing Administration power or benefits, when the power is available for sale, the distribution utility's small customers or may assign, from a public utility distribution provider to a default provider(s), when the commission determines it is in the best interest of the customer, small customers that are not receiving service from a competitive electricity supplier. Customers may choose not to take any service from the default supplier.

Renumber: subsequent subsections

55. Page 28, line 29

Following: "choice."

Insert: "and default supplier service, pursuant to a plan approved by the commission and in coordination with the distribution utility's customer education plan."

56. Page 28, line 30 through page 29, line 1

Strike: "advertise or promote its default supplier service; However, it may educate its customers about default supply service"

Insert: "sponsor advertising of the default supplier service that is designed to secure customers."

57. Page 29, line 5

Following: "services"

Insert: "pursuant to a plan approved by the commission and in coordination with the distribution utility's customer education plan"

58. Page 29, line 6

Strike: "A"

Insert: "Except when the default supplier is the utility distribution provider, a

59. Page 29, line 9

Following: "agreements for the"

Insert: "lease or"

60. Page 29, line 12

Strike: "having accounts possessing an aggregated monthly peak greater than 100 kilowatts"

Insert: "having individual accounts with an average monthly demand in the previous calendar year of 100 kilowatts or more or to new commercial or industrial electric consumers having individual accounts with an estimated monthly demand of 100 kilowatts or more"

61. Page 29, line 17 & 18

Following: "application"

Strike: "process and determining the length of default supplier status"

Insert: "and revocation and processes"

62. Page 29, line 26

Strike: "in providing this service"

Insert: "of re-entering the default supplier business"

BPA F 1326.03e
(01-1999)
(Previously BPA 1373)

U.S. DEPARTMENT OF ENERGY
BONNEVILLE POWER ADMINISTRATION
FACSIMILE COVER SHEET

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MESSAGE NO: (if applicable)

EXHIBIT 5
DATE 3/26/99
SB 406

DATE 3/24/99	TIME A.M. P.M.	NO. PAGES (Exclude cover sheet) 5	MACHINE LOCATION HQ
NAME Representative Tom Zook ORG. CODE/LOCATION OR COMPANY House of Representatives, Helena MT PHONE NO(S) 406-444-4800 COMMERCIAL 406-444-4800 FTS		FROM NAME Ruth Bennett, Vice President Power Marketing ORG. CODE/LOCATION Bonneville Power Administration PHONE NO(S) 503-230-7640 COMMERCIAL 503-230-7640 FTS	FAX NO(S) COMMERCIAL FTS

SUBJECT

SB406

COMMENTS

Paul Norman, Sr. Vice President of Power Marketing, is out of town and has relied on me to make sure this letter gets to you today. Please provide copies to all members of the House Appropriations Committee. Original letter mailed this evening.

Ruth Bennett
Vice President Power Marketing
Bonneville Power Administration

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Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

POWER BUSINESS LINE

March 24, 1999

In reply refer to: P-6

Mick Robinson
Senior Policy Advisor
Governor's Office
Capitol Station
Helena, MT 59620

Copy sent by Fax 3/24/99

Dear Mr. Robinson:

The Montana Legislature soon will be making decisions on certain electric restructuring issues through SB 406 that relate to purchase of power from the federal Columbia River power system. I would like to share our perspective in the context of our efforts to implement the Bonneville Power Administration's (Bonneville) Federal power subscription policy.

Bonneville is committed to ensuring that Federal Columbia River system benefits reach Montana consumers. To achieve this, we believe we must retain cost-based rates and regional preference in the sale of federal power. It is vitally important that the Pacific Northwest (PNW) region remain unified on these concepts as national electric restructuring unfolds. This goal was set by the Northwest governors in their 1996 Comprehensive Review of the Northwest Energy System.

Subscription Policy

In establishing our subscription policy, we relied on three major principles:

- accomplish post-2001 sales of federal power in a manner that does not require new federal legislation
- avoid a rate increase during the 2001-2006 rate period; and
- make federal power available to residential customers of investor-owned utilities (IOUs), who have the least bargaining leverage.

The resulting policy reflects a delicate balance among regional interests. Bonneville will make available during the 2001-2006 rate period, 1000 average megawatts (aMW) of power and an additional 800 aMW in financial benefits for residential customers of IOUs, provided the IOUs forego participation in the Residential Exchange program. The financial benefits will be designed to approximate the value of federal power relative to the expected market. For the 2007-2011 period, the combined benefit increases to 2200 aMW. With the commitment of the 1000 aMW, Bonneville power will serve at least 40% of regional residential and small farm

loads, up from about 29% prior to subscription. Residential and small farm loads represent approximately 35%-40% of total regional electric loads. Because there is a limited amount of firm power available from the federal system, and because we do not know how much power public preference-eligible entities will purchase, it is uncertain whether Bonneville will have any power remaining for direct service industry customers. If we had pledged any greater amount to the IOUs' residential customers, we believe this would have jeopardized regional unity, potentially triggered federal legislative action, and jeopardized the region's ability to retain federal benefits.

For the next five-year rate period, we intend to offer subscription power to the IOUs at a rate approximately equivalent to our lowest cost, Priority Firm (PF) rate. The PF rate is available only to our public, preference-eligible customers. We have asked the four PNW state utility commissions to provide recommendations to us concerning the distribution of power and financial benefits among the region's six IOUs, including the western Montana residential loads of Montana Power Company. It is critically important for a regional consensus to emerge concerning the amount of power and financial benefits that will be delivered to IOUs in each of the PNW states.

Montana is moving faster than Bonneville and the rest of the region in the detail and immediacy of assurances the state would like to have concerning purchase of federal power, due in part to pending legislative decisions on SB 406 and also to the pace set by the Montana retail electric restructuring law. Bonneville understands that one of Montana's most important priorities is to promote development of workable competition for its residential consumers. It is our further understanding that Montana would like to secure a fair share of federal power benefits for Montana Power Company's residential customers in a manner that avoids creating an unlevel playing field among retail power suppliers. Within the constraints of our existing statutes and the need to conduct public involvement on policies that impact who may purchase federal power, Bonneville remains committed to working with Montana to identify ways to accommodate this objective. However, this will require significant effort by both Bonneville and Montana and development of a working consensus with the rest of the PNW region. With respect to key Bonneville policy issues presently under consideration in the region, we cannot make promises in order to meet deadlines associated with Montana's decisionmaking processes, but we will provide you with our most current thinking.

Implementing Subscription Power Sales

I would like to discuss some specific examples of the difficulties we are facing, with the intent of helping clarify the decisions and tradeoffs the Montana legislature is addressing in SB 406. I will couch this discussion in terms of the two broadest scenarios that may potentially develop for delivery of federal benefits to Montana Power's residential customers: 1) a request from Montana Power's distribution utility for a share of the 1800 aMW of combined power and financial settlement for its historic residential customers in western Montana in the context

discussed above; and 2) requests from one or more preference-eligible public entities for requirements service for loads in western Montana.

Last week Bonneville requested comments from the region on two proposed policies. Each are based upon Bonneville's existing statutory constraints and each have significant implications for the delivery of federal benefits to Montana. A 30-day comment period on these policies will commence with their publication in the Federal Register in early April. Bonneville will make final decisions on the policies thereafter.

Customer Eligibility to Purchase Federal Power

We have requested comments on the standards for service that Bonneville will use to determine whether a potential customer is eligible to purchase federal power. The two standards that are most relevant to SB 406 concern a customer's ability to demonstrate an obligation to serve loads and ownership or an ownership-type lease of distribution wires to assure delivery of federal power. By establishing a process for the Montana Public Service Commission to confer default supplier status on one or more entities, SB 406 restores to selected entities an obligation to serve retail customer loads in future years after the Montana retail access transition period to full competition has ended. The obligation to serve is essential for any entity seeking to purchase federal power. Bonneville's present standards also require customers to own and operate a distribution system. However, we have proposed a modification that may allow us to recognize ownership-type leases in lieu of distribution wires ownership. This is only a proposal at this time and is subject to public comment. While we acknowledge that retail open access conditions may accomplish some of the purposes of traditional ownership or lease agreements and while we have invited regional comment on this matter as well, Bonneville cannot offer Montana assurance that retail open access will be recognized as a substitute for distribution wires ownership or a viable lease agreement for the 2001-2006 period.

Customer Net Requirements

Bonneville has also issued a proposed policy outlining the factual determinations that must be made to establish a utility's net load requirement, i.e., the amount of load it has in excess of its generating resources. The net load requirement is the amount of federal power a utility may purchase. This proposal directly addresses the scenario in which the Montana Power Company distribution utility requests a share of the power Bonneville has proposed to make available for IOU residential customers. Establishing a net requirement for MPC may be essential to Bonneville for purposes of providing a means to deliver a portion of the 1800 aMW of subscription benefits to Montana. An added complexity is the potential for Montana Power to lose substantial amounts of load as customers choose alternate suppliers after an initial net requirement is established, thereby jeopardizing or potentially eliminating Montana Power's net requirements status.

Montana Power Company's sale of its generation creates a serious dilemma for us as we examine ways to establish MPC's net requirements as a vehicle to sell federal power to IOUs within our existing statutory constraints. While our proposed policy includes an option that would recognize auction of generating resources as a method that may allow Montana Power to establish a net load requirement in western Montana, we are very concerned about the precedent this may set. The situation is particularly problematic to the extent that other utilities are encouraged to sell their resources for use outside the PNW region and subsequently seek to rely on Bonneville to purchase replacement power for their native loads. If Bonneville were to establish policies that encourage generation resource divestiture and related retail access decisions by offering to replace resource needs with federal power, the value of federal benefits will be lessened for all purchasers. Further, this would not comport with the Comprehensive Regional Review's vision of Bonneville's future role in the region.

Federal Power System Benefits in Montana

Because Montana rural electric cooperatives entered into pre-subscription contracts, Montana already has a commitment from Bonneville to provide federal power benefits in the post-2001 period in volumes considerably greater than we are presently providing (186 aMW in fiscal year (FY) 1999 compared to a projected range of 278-348 aMW in FY 2002, depending upon load growth and other contractual provisions). Many of these contracts extend through 2011, with some continuing for several years beyond. Bonneville will be providing this power to 21 of the state's 26 rural co-ops. We also continue to sell power to Columbia Falls Aluminum (CFAC), but do not know whether CFAC will seek to continue to purchase from us beyond 2001.

In closing, I reiterate that Bonneville is committed to working with Montana to provide benefits from the Columbia River Power System, consistent with our statutes and with a regional consensus that preserves these benefits for the Northwest. Specifically, we will work with Montana to identify ways to deliver benefits to Montana Power's historic residential customers through at least one of the following mechanisms consistent with our subscription decision:

- service to new Montana public preference entities that demonstrate their eligibility prior to the close of our subscription process in early 2000
- delivery of physical power to Montana Power for the benefit of residential and small farm customers
- delivery of financial benefits to Montana Power for distribution to residential and small farm customers

Please contact me, if you would like to further discuss any of the points raised in this letter. I also invite you to rely upon our Montana Liaison, Gail Kuntz, for assistance with any questions you may have. We look forward to working productively with Montana policymakers and your regional counterparts as we clarify the details necessary to proceed with subscription power sales.

Sincerely,

Paul Norman

FOR
Paul Norman
Vice-President
Power Business Line

cc: Bob Anderson
Senator Steve Doherty
Bill Drummond
John Etchart
Jack Haffey
Bob Nelson
Debbie Smith
Senator Fred Thomas
Representative Tom Zook

HOUSE OF REPRESENTATIVE ROLL CALL

HOUSE APPROPRIATIONS

COMMITTEE

DATE 3/26/99

NAME	PRESENT	ABSENT	EXCUSED
TOM ZOOK, CHAIRMAN	✓		
STEVE VICK, VICE CHAIR, MAJ.	✓		
JOE QUILICI, VICE CHAIR, MIN	✓		
ERNEST BERGSAGEL	✓		
PEGGY BERGSAGEL	✓		
BEVERLY BARNHART	✓		
ROSALIE "ROSIE" BUZZAS	✓		
JOHN COBB	✓ 9:30		
STAN FISHER	✓		
DICK HAINES	✓		
ROYAL JOHNSON	✓		
BETTY LOU KASTEN	✓ 9:30		
MATT MCCANN	✓		
RED MENAHAN	✓		
RAY PECK	✓		
LILA TAYLOR	✓		
JOE TROPILA	✓		
JOHN WITT	✓		

**MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER**

DATE 3/26/99

BILL NO. SB406

SPONSOR(S) Sen. Doherty

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By **CHAIRMAN TOM ZOOK**, on March 29, 1999 at 9:00 A.M., in Room 312 - 2 Capitol.

ROLL CALL

Members Present:

Rep. Tom Zook, Chairman (R)
Rep. Joe Quilici, Vice Chairman (D)
Rep. Steve Vick, Vice Chairman (R)
Rep. Beverly Barnhart (D)
Rep. Ernest Bergsagel (R)
Rep. Peggy Bergsagel (R)
Rep. Rosalie (Rosie) Buzzas (D)
Rep. John Cobb (R)
Rep. Stan Fisher (R)
Rep. Dick Haines (R)
Rep. Royal Johnson (R)
Rep. Betty Lou Kasten (R)
Rep. Matt McCann (D)
Rep. Red Menahan (D)
Rep. Ray Peck (D)
Rep. Joe Tropila (D)
Rep. John Witt (R)

Members Excused: None.

Members Absent: Rep. Lila Taylor (R)

Staff Present: Joanne Gunderson, Committee Secretary
Taryn Purdy, Legislative Fiscal Division

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Minutes were recorded on a Sony BI-85 machine; references are measured in inches rather than minutes.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 301, SB 359, 3/23/1999
Executive Action: SB 406, SB 359

HEARING ON SB 301Opening Statement by Sponsor:

Sen. Tom Keating, SD , presented SB 301.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 40}

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 40 - 94}

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 94 - 140}

EXECUTIVE ACTION ON SB 406

Motion: REP. JOHNSON moved that SB 406 BE CONCURRED IN.

Motion: REP. JOHNSON moved that SB 406 BE AMENDED. EXHIBIT(1)

{Tape : 1; Side : A; Approx. Time Counter : 140 - 150}

Discussion:

{Tape : 1; Side : A; Approx. Time Counter : 150 - Tape : 2; Side : A; Approx. Time Counter : 176 Comments : the amendment included changing the termination date to July 1, 1999.}

Vote: Motion carried unanimously.

{Tape : 2; Side : A; Approx. Time Counter : 176 - 183; Comments : Further action on SB 406 was suspended for a later time.}

HEARING ON SB 359Opening Statement by Sponsor:

Sen. Eve Franklin, SD 21, presented SB 359.

{Tape : 2; Side : A; Approx. Time Counter : 183 - 257}

Proponents' Testimony:

EXHIBIT(2)

Joe Mazurek, Attorney General, Department of Justice EXHIBIT(3)

{Tape : 2; Side : A; Approx. Time Counter : 257 - 389} EXHIBIT(4)

Amendments to Senate Bill No. 406
3rd Reading Copy

Requested by Representative Royal Johnson

For the House Appropriations Committee

Prepared by Todd Everts
March 26, 1999 (2:08PM)

1. Page 2, line 30.

Strike: "as provided in [section"

Strike: "37]"

Insert: "pursuant to 69-8-404"

2. Page 3, line 29.

Strike: "lease,"

3. Page 7, line 7.

Strike: "[section"

Strike: "37]"

Insert: "69-8-404"

4. Page 20, line 26 through line 27.

Strike: "pursuant" on line 26 through "37]"

Insert: "from the commission"

5. Page 25, line 9 through line 10.

Strike: ", pursuant" on line 9 through "37]," on line 10

6. Page 26, line 19.

Strike: "in [section 37]"

Insert: "by commission rules"

7. Page 27.

Following: line 12

Insert: "(8) The commission shall license default suppliers and
enforce default licensing provisions pursuant to 69-8-404.

July

(9) The commission shall promulgate rules for the licensing of default suppliers on or before ~~December~~ 1, 1999.

(10) Until the commission has determined that workable competition has developed for small customers, a default supplier's obligation to serve remains."

Renumber: subsequent subsections

8. Page 27, line 20 through page 29, line 19.

Strike: section 37 in its entirety

Renumber: subsequent sections

9. Page 30, line 10.

Strike: "Sections 37 and 38] are"

Insert: "Section 37] is"

10. Page 30, line 11.

Strike: "sections 37 and 38"

Insert: "section 37"

- END -

HOUSE OF REPRESENTATIVE ROLL CALL

HOUSE APPROPRIATIONS COMMITTEE

DATE 3/29/99

NAME	PRESENT	ABSENT	EXCUSED
TOM ZOOK, CHAIRMAN	✓		
STEVE VICK, VICE CHAIR, MAJ.	✓		
JOE QUILICI, VICE CHAIR, MIN	✓		
ERNEST BERGSAGEL	✓		
PEGGY BERGSAGEL	✓		
BEVERLY BARNHART	✓		
ROSALIE "ROSIE" BUZZAS	✓		
JOHN COBB	✓		
STAN FISHER	✓		
DICK HAINES	✓		
ROYAL JOHNSON	✓		
BETTY LOU KASTEN	✓		
MATT MCCANN	✓		
RED MENAHAN	✓		
RAY PECK	✓		
LILA TAYLOR		✓	
JOE TROPILA	✓		
JOHN WITT	✓		



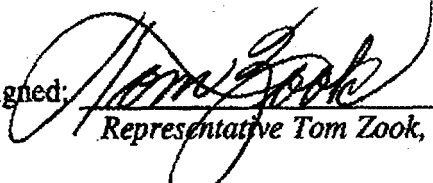
HOUSE STANDING COMMITTEE REPORT

March 30, 1999

Page 1 of 9

Mr. Speaker:

We, your committee on Appropriations report that Senate Bill 406 (third reading copy -- blue) be concurred in as amended.

Signed: 

Representative Tom Zook, Chair

To be carried by Representative Royal Johnson

And, that such amendments read:

1. Title, page 1, line 6.
Strike: "BUSINESS"
Insert: "COMMERCIAL"
2. Title, page 1, line 11.
Strike: "69-8-210,"
3. Page 1, line 13.
Strike: "business"
Insert: "commercial"
4. Page 1, line 20.
Strike: "business"
Insert: "commercial"
5. Page 1, line 24.
Strike: "business"
Insert: "commercial"
6. Page 1, line 27.
Strike: "business"
Insert: "commercial"
7. Page 2, line 16.
Strike: "32"
Insert: "28"

Committee Vote:

Yes 15, No 0.

711327SC.ham



8. Page 2, line 19.

Strike: "32"

Insert: "28"

9. Page 2, line 24.

Strike: "business"

Insert: "commercial"

10. Page 2, line 24 through line 25.

Following: ", "

Strike: the remainder of line 24 through "less" on line 25

Insert: "individual accounts of a commercial customer with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts"

11. Page 2, line 26.

Strike: "business"

Insert: "commercial"

12. Page 2, line 29.

Strike: "Exemption from jurisdiction"

Insert: "Jurisdiction"

13. Page 2, line 29 through page 3, line 3.

Following: the third "." on line 29

Strike: the remainder of line 29 through "commission" on page 3, line 3

Insert: "The public service commission has jurisdiction to choose and regulate a buying cooperative that obtains a default supplier license, as provided in [section 31]. If a buying cooperative that has obtained a default supplier license has the opportunity to obtain federal power marketing administration power, the public service commission also has jurisdiction over the purchase and distribution of that power, as provided in [section 31]."

14. Page 3, line 6 and line 7.

Following: "chapter" on line 6

Insert: "only"

Following: "to" on line 6

Strike: "residential"

Insert: "small"

Following: "customers" on line 6

Strike: the remainder of line 6 through "utility" on line 7

Insert: "as a default supplier, pursuant to [section 31]."

15. Page 3, line 11.

Following: "have"

Strike: "perpetual"
Following: "existence"
Insert: "for as long as it serves its purpose"

16. Page 3, line 13.
Strike: subsection (4) in its entirety
Renumber: subsequent subsections

17. Page 3, line 29.
Strike: "lease,"

18. Page 3, line 30.
Following: "systems"
Insert: ", except that a buying cooperative may enter into
transmission or distribution agreements for the lease or use
of capacity on transmission and distribution systems"

19. Page 4, line 1.
Following: "having"
Insert: "individual"

20. Page 4, line 2.
Following: "accounts"
Strike: "possessing an aggregated"
Insert: "with an average"
Following: "monthly"
Strike: "peak greater than"
Insert: "demand in the previous calendar year of"
Following: "kilowatts"
Insert: "or more or a new commercial or industrial customer with
an estimated average monthly demand of 100 kilowatts or
more"

21. Page 4, line 5.
Strike: "32"
Insert: "28"

22. Page 4, line 20.
Strike: "32"
Insert: "28"

23. Page 4, line 22 through line 23.
Following: "individuals" on line 22
Strike: remainder of line 22 through "cooperatives" on line 23

24. Page 4, line 23.
Strike: "32"
Insert: "28"

25. Page 4, line 27.

Strike: "32"
Insert: "28"

26. Page 5, line 2.
Strike: "32"
Insert: "28"

27. Page 5, line 7.
Strike: "32"
Insert: "28"

28. Page 5, line 11.
Strike: "31"
Insert: "27"

29. Page 5, line 14.
Strike: "32"
Insert: "28"

30. Page 5, line 30.
Strike: "32"
Insert: "28"

31. Page 6, line 9.
Strike: "31"
Insert: "27"

32. Page 6, line 18.
Strike: "31"
Insert: "27"

33. Page 6, line 29.
Strike: "32"
Insert: "28"

34. Page 7, line 3.
Following: the first "to"
Strike: "residential customers and"
Following: "small"
Strike: "business"

35. Page 7, line 3 through line 4.
Following: "utility"
Strike: remainder of line 3 through "cooperatives" on line 4

36. Page 7, line 6 through line 7.
Following: "commission" on line 6
Strike: remainder of line 6 through "license" on line 7

37. Page 7, line 7.

Strike: "in [section"
Strike: "37}"
Insert: "by commission rule"

38. Page 8, line 13.
Strike: "32"
Insert: "28"

39. Page 8, line 21.
Strike: "32"
Insert: "28"

40. Page 8, line 23.
Strike: "32"
Insert: "28"

41. Page 8, line 28.
Following: the first "cooperative"
Strike: "or of another buying cooperative that is a member of the
buying cooperative"

42. Page 8, line 30.
Strike: "32"
Insert: "28"

43. Page 9, line 20.
Following: "incorporation"
Strike: ", consolidation, merger, or conversion"

44. Page 9, line 28.
Strike: "32"
Insert: "28"

45. Page 10, line 2.
Strike: "32"
Insert: "28"

46. Page 10, line 19.
Strike: "32"
Insert: "28"

47. Page 11, line 16.
Following: " ; "
Insert: "and"

48. Page 11, line 19.
Following: "year"
Strike: " ; and"
Insert: " . "

49. Page 11, line 20 through line 22.
Strike: subsection (f) in its entirety

50. Page 12, line 26.
Following: "notice"
Strike: "."
Insert: "; and"

51. Page 12, line 27 through line 29.
Strike: subsection (c) in its entirety
Re-number: subsequent subsection

52. Page 13, line 4 through line 5.
Strike: subsection (5) in its entirety

53. Page 13, line 7 through page 16, line 28.
Strike: sections 25 through 28 in their entirety
Re-number: subsequent sections

54. Page 17, line 9 through line 10.
Following: "money" on line 9
Strike: remainder of line 9 through "grantors" on line 10

55. Page 17, line 14.
Strike: "32"
Insert: "28"

56. Page 18, line 3.
Strike: "32"
Insert: "28"

57. Page 19, line 1.
Strike: "32"
Insert: "28"

58. Page 19, line 14.
Strike: "32"
Insert: "28"

59. Page 19, line 16.
Following: "amendment,"
Strike: "consolidation, merger, conversion,"

60. Page 19, line 17.
Following: "amendment,"
Strike: "consolidation, merger, conversion,"

61. Page 19, line 19.
Strike: "32"
Insert: "28"

62. Page 19, line 20.

Strike: "32"

Insert: "28"

63. Page 19, line 22.

Strike: "consolidation, merger, conversion,"

64. Page 19, line 24.

Strike: "32"

Insert: "28"

65. Page 19, line 26.

Strike: "consolidation, merger, conversion,"

66. Page 20, line 1.

Strike: "30"

Insert: "26"

67. Page 20, line 4.

Strike: "32"

Insert: "28"

Following: "taxes"

Insert: ", other than any applicable fees to fund the Montana consumer counsel and the public service commission as provided in Title 69, chapter 1, parts 2 and 4"

68. Page 20, line 26.

Following: the third "a"

Insert: "default supplier"

69. Page 20, line 26 through line 27.

Strike: "pursuant" on line 26 through "371"

Insert: "from the commission"

70. Page 22, line 5.

Following: "small"

Strike: "business"

Insert: "commercial"

Following: "has"

Insert: "an individual account with"

71. Page 22, line 6.

Strike: "accounts possessing"

Following: "an"

Strike: "aggregated"

Insert: "average"

Following: "monthly"

Strike: "peak"

Insert: "demand in the previous calendar year"

Following: "of"

Insert: "less than"

Following: "or"

Strike: "less"

Insert: "a new commercial customer with an estimated average monthly demand of less than 100 kilowatts or a public utility distribution services provider that has opened access on its distribution system pursuant to [this act]"

72. Page 24, line 29.

Strike: "(3)"

Insert: "(4)"

73. Page 25, line 9 through line 10.

Strike: ", pursuant" on line 9 through "371," on line 10

74. Page 25, line 11.

Following: "competitive"

Insert: "electricity"

75. Page 25, line 11 through line 12.

Following: "supplier"

Strike: remainder of line 11 through "exists" on line 12

Insert: "The transition advisory committee shall review and address the need for continued default supply service and make recommendation to the 57th legislature."

76. Page 25, line 25 through page 26, line 9.

Strike: section 35 in its entirety

Renumber: subsequent sections

77. Page 26, line 15.

Following: "procured"

Insert: "as provided in this section:
(i)"

78. Page 26, line 16.

Following: "SUPPLIERS"

Strike: "or"

Insert: "for those customers not being served by a competitive supplier;
(ii) by the"

79. Page 26, line 17.

Following: "COMPETITIVE"

Insert: "electricity"

Following: "SUPPLIER"

Insert: " ; "

80. Page 26, line 19.

Strike: "in [section 37]"

Insert: "by commission rules"

81. Page 27.

Following: line 12

Insert: "(8) The commission shall license default suppliers and enforce default licensing provisions pursuant to 69-8-404.

(9) The commission shall promulgate rules for the licensing of default suppliers on or before December 1, 1999.

(10) Until the commission has determined that workable competition has developed for small customers, a default supplier's obligation to serve remains."

Renumber: subsequent subsections

82. Page 27, line 20 through page 29, line 19.

Strike: section 37 in its entirety

Renumber: subsequent sections

83. Page 30, line 10.

Strike: "Sections 37 and 38] are"

Insert: "Section 32] is"

84. Page 30, line 11.

Strike: "sections 37 and 38"

Insert: "section 32"

- END -

INDEX TO BILLS IN COMMITTEE

July 02, 1999

- Committee: (S) Free Conference -

02:28 PM

SB 406	SPONSOR: Doherty, Steve	SHORT TITLE: Revise laws for formation of cooperative to purchase power for small customers
	REFERRED ON: 04/13/1999	HEARD ON: 04/14/1999
	REFERRED ON: 04/16/1999	HEARD ON: 04/17/1999
	REFERRED ON: 04/20/1999	HEARD ON: 04/20/1999
	FINAL DISPOSITION 05/07/1999 Chapter Number Assigned	
SB 458	SPONSOR: Thomas, Fred	SHORT TITLE: Revise restitution amounts for certain illegally taken species
	REFERRED ON: 04/09/1999	HEARD ON: 04/13/1999
	FINAL DISPOSITION 04/29/1999 Chapter Number Assigned	
SB 482	SPONSOR: Mesaros, Ken	SHORT TITLE: Request interim study of licensure for mortgage lending
	REFERRED ON: 04/09/1999	HEARD ON: 04/13/1999
	FINAL DISPOSITION 05/07/1999 Chapter Number Assigned	
SB 499	SPONSOR: Grosfield, Lorents	SHORT TITLE: Revise water quality act per federal requirements
	REFERRED ON: 04/07/1999	HEARD ON: 04/13/1999
		HEARD ON: 04/15/1999
	FINAL DISPOSITION 05/10/1999 Chapter Number Assigned	

APPROVED BY COMM ON
APPROPRIATIONS

SENATE BILL NO. 406

INTRODUCED BY S. DOHERTY, E. BERGSAGEL, A. BISHOP, J. BOHLINGER, J. ELLINGSON, D. EWER,
L. GROSFIELD, H. HARPER, J. LYNCH, W. MCNUTT, J. QUILICI, F. THOMAS, B. WILSON

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE FORMATION OF BUYING COOPERATIVES
TO PURCHASE ELECTRICITY FOR RESIDENTIAL AND SMALL ~~BUSINESS~~ COMMERCIAL CUSTOMERS IN
INVESTOR-OWNED DISTRIBUTION UTILITY SERVICE TERRITORIES IN WHICH THOSE CUSTOMERS CAN
CHOOSE AN ELECTRICITY SUPPLIER; AUTHORIZING THE PUBLIC SERVICE COMMISSION TO DESIGNATE
A ONE OR MORE ~~DEFAULT SUPPLIER~~ SUPPLIERS FOR ELECTRICITY WITHIN AN INVESTOR-OWNED
DISTRIBUTION UTILITY'S SERVICE TERRITORY; AMENDING SECTIONS 69-8-103, ~~69-8-203~~, 69-8-201,
~~69-8-210~~, AND 69-8-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, residential and small ~~business~~ COMMERCIAL customers of investor-owned distribution
utilities in Montana need access to reliable electricity supply at ~~just and reasonable~~ EQUITABLE prices; and

~~WHEREAS, competitive retail markets for providing electricity supply to those customers in
Montana have not yet developed; and~~

~~WHEREAS, evidence from other states that have preceded Montana into a restructured electricity
supply market indicates that meaningful retail competition for those customers may not develop for a
significant period of time; and~~

WHEREAS, the aggregation of residential and small ~~business~~ COMMERCIAL customers that do not
have access to competitive electricity suppliers at ~~just and reasonable~~ EQUITABLE prices provides them with
market power to secure electricity at the least cost; and

WHEREAS, allowing one ~~entity~~ OR MORE DEFAULT SUPPLIERS to aggregate residential and small
~~business~~ COMMERCIAL customers to purchase electricity maximizes economies of scale, increases
administrative efficiency, and provides maximum benefits to all small electricity customers; and

WHEREAS, wholesale competition in electricity markets may be facilitated by allowing entities
to compete for the opportunity to provide electricity supply to those residential and small ~~business~~
COMMERCIAL customers on an aggregated basis; and

~~WHEREAS, wholesale competition is consistent with the intent of Montana's electricity
restructuring act and provides for economic development within the state; and~~

1 WHEREAS, the formation of nonprofit electricity buying cooperatives enhances the chances of
2 securing for small customers the greatest amount of electricity at the least cost from the federal power
3 system; and

4 WHEREAS, THE STATE OF MONTANA DESIRES THAT ITS RESIDENTS HAVE ACCESS TO THE BENEFITS OF
5 COMPETITIVE RETAIL ELECTRICITY MARKETS AND FEDERAL POWER MARKETING ADMINISTRATION ELECTRICITY; AND

6 WHEREAS, FEDERAL POWER MARKETING ADMINISTRATION POWER OR BENEFITS SHOULD BE DISTRIBUTED AS
7 WIDELY AND EQUITABLY AS POSSIBLE AMONG SMALL CUSTOMERS OF OPEN-ACCESS PUBLIC UTILITIES IN THE STATE OF
8 MONTANA IN A MANNER THAT PROMOTES EFFICIENT DEVELOPMENT AND OPERATION OF THE COMPETITIVE RETAIL
9 ELECTRICITY MARKETS; AND

10 WHEREAS, the state of Montana benefits by enacting legislation this session that maximizes the
11 chances of an electricity buying cooperative being able to purchase power for small customers from the
12 Bonneville Power Administration at preferential rates for the subscription period that begins in 2001.

13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15

16 NEW SECTION. Section 1. Short title. [Sections 1 through 32 28] may be cited as the "Electricity
17 Buying Cooperative Act."

18

19 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 32 28], unless the context
20 requires otherwise, the following definitions apply:

21 (1) "Distribution utility" means the electricity distribution portion of a public utility as defined in
22 69-8-103.

23 (2) "Residential customer" means a residential customer of a distribution utility.

24 (3) "Small ~~business~~ COMMERCIAL customer" means for a distribution utility, ~~the accounts of a~~
25 ~~commercial customer whose aggregated load is a monthly peak of 100 kilowatts or less~~ INDIVIDUAL
26 ACCOUNTS OF A COMMERCIAL CUSTOMER WITH AN AVERAGE MONTHLY DEMAND IN THE PREVIOUS CALENDAR YEAR OF
27 LESS THAN 100 KILOWATTS OR A NEW COMMERCIAL CUSTOMER WITH AN ESTIMATED AVERAGE MONTHLY DEMAND OF
28 LESS THAN 100 KILOWATTS.

29 (4) "Small customer" means a residential customer or small ~~business~~ COMMERCIAL customer of a
30 distribution utility.

1
2 NEW SECTION. Section 3. Exemption from jurisdiction JURISDICTION of public service commission.

3 ~~Except when licensed as the A default supplier for a distribution utility, as provided in [section 36-37], or~~
4 ~~when licensed as an electricity supplier pursuant to 69-8-404, a buying cooperative transacting business~~
5 ~~in this state pursuant to [sections 1 through 32] is exempt in all respects from the jurisdiction and control~~
6 ~~of the public service commission. THE PUBLIC SERVICE COMMISSION HAS JURISDICTION TO CHOOSE AND REGULATE~~
7 ~~A BUYING COOPERATIVE THAT OBTAINS A DEFAULT SUPPLIER LICENSE, AS PROVIDED IN [SECTION 31]. IF A BUYING~~
8 ~~COOPERATIVE THAT HAS OBTAINED A DEFAULT SUPPLIER LICENSE HAS THE OPPORTUNITY TO OBTAIN FEDERAL POWER~~
9 ~~MARKETING ADMINISTRATION POWER, THE PUBLIC SERVICE COMMISSION ALSO HAS JURISDICTION OVER THE PURCHASE~~
10 ~~AND DISTRIBUTION OF THAT POWER, AS PROVIDED IN [SECTION 31].~~

11
12 NEW SECTION. Section 4. Permissible purpose of incorporation. A buying cooperative may be
13 organized under this chapter ONLY for the purpose of supplying electricity to ~~residential~~ SMALL customers
14 ~~and small business customers of a distribution utility~~ AS A DEFAULT SUPPLIER, PURSUANT TO [SECTION 31].

15
16 NEW SECTION. Section 5. Powers of buying cooperative. A buying cooperative may:

17 (1) sue and be sued in its corporate name;

18 (2) have ~~perpetual~~ existence FOR AS LONG AS IT SERVES ITS PURPOSE;

19 (3) adopt a corporate seal and alter the seal at pleasure;

20 ~~(4) become a member in one or more other buying cooperatives;~~

21 ~~(5)(4)~~ own, possess, and enjoy as much real and personal property as is necessary for the
22 transaction of its business and sell and dispose of the property;

23 ~~(6)(5)~~ borrow money, or otherwise contract indebtedness, and pledge its property, both real and
24 personal, to secure the payment of the borrowed money or contract for debt;

25 ~~(7)(6)~~ enter into contracts and other obligations for the purchase and sale of electricity to its
26 members;

27 ~~(8)(7)~~ sell or otherwise dispose of electricity on the wholesale market not consumed by its
28 members;

29 ~~(9)(8)~~ conduct its business and exercise all of its powers within or outside of this state;

30 ~~(10)(9)~~ adopt, amend, and repeal bylaws; and

1 ~~(11)(10)~~ except as prohibited in [section 6], do and perform all other acts and things and have
2 and exercise all other powers that may be necessary, convenient, or appropriate to accomplish the
3 purpose for which the buying cooperative is organized.

4
5 **NEW SECTION.** **Section 6. Restrictions on powers of buying cooperative.** Notwithstanding any
6 other provision of this chapter, a buying cooperative may not:

7 (1) construct, purchase, take, receive, ~~lease~~, or otherwise acquire or own, hold, equip, maintain,
8 or operate electric generating plants or transmission or distribution lines or systems, EXCEPT THAT A BUYING
9 COOPERATIVE MAY ENTER INTO TRANSMISSION OR DISTRIBUTION AGREEMENTS FOR THE LEASE OR USE OF CAPACITY ON
10 TRANSMISSION AND DISTRIBUTION SYSTEMS;

11 (2) purchase electricity for or sell electricity to commercial or industrial electric consumers having
12 INDIVIDUAL accounts ~~possessing an aggregated~~ WITH AN AVERAGE monthly ~~peak greater than~~ DEMAND IN THE
13 PREVIOUS CALENDAR YEAR OF 100 kilowatts OR MORE OR A NEW COMMERCIAL OR INDUSTRIAL CUSTOMER WITH AN
14 ESTIMATED AVERAGE MONTHLY DEMAND OF 100 KILOWATTS OR MORE; or

15 (3) offer for sale any products other than electricity supply.

16
17 **NEW SECTION.** **Section 7. Waiver of notice.** (1) If [sections 1 through ~~32~~ 28] or the buying
18 cooperative's articles of incorporation or bylaws require that notice be given, a person may waive the
19 notice if the waiver is in writing and signed by the person entitled to the notice whether before or after
20 the time fixed for the giving of the notice.

21 (2) If a person entitled to notice of a meeting attends the meeting, the person's attendance
22 constitutes a waiver of notice of the meeting, except in the case when the person attends the meeting
23 for the express purpose of objecting to the transaction of any business because the meeting was not
24 lawfully called or convened.

25
26 **NEW SECTION.** **Section 8. Name.** (1) The name of each buying cooperative must include the
27 phrase "electricity buying cooperative" and the abbreviation "inc."

28 (2) The name of a buying cooperative must distinguish it from the name of another corporation
29 organized under the laws authorized to transact business in this state.

30 (3) The phrase "electricity buying cooperative" may not be used in the name of any corporation

1 organized under the laws of or authorized to transact business in this state, except a buying cooperative
2 transacting business in this state pursuant to [sections 1 through 32 28].

3

4 **NEW SECTION.** **Section 9. Incorporators.** Five or more individuals ~~or two or more buying~~
5 ~~cooperatives~~ may organize a buying cooperative, as provided in [sections 1 through 32 28].

6

7 **NEW SECTION.** **Section 10. Articles of incorporation.** (1) The articles of incorporation of a buying
8 cooperative must state in the caption that the articles of incorporation are executed pursuant to [sections
9 1 through 32 28], must be signed by each of the incorporators, and must state:

- 10 (a) the name of the cooperative;
11 (b) the address of its principal office;
12 (c) the names and addresses of the incorporators;
13 (d) the names and addresses of the persons who constitute its first board of trustees; and
14 (e) any provisions not inconsistent with [sections 1 through 32 28] considered necessary or
15 advisable for the conduct of its business and affairs.

16 (2) In addition to provisions required in subsection (1), the articles of incorporation may also
17 contain:

- 18 (a) provisions, not inconsistent with law, eliminating or limiting liability as provided in [sections
19 1 through 32 28];
20 (b) provisions for classifications of members in a buying cooperative; and
21 (c) provisions for issuance of nonvoting stock.

22 (3) A buying cooperative's articles of incorporation must be submitted to the secretary of state
23 for filing, as provided in [section 34 27].

24 (4) It is not necessary to include in the articles of incorporation of a buying cooperative the
25 purpose for which it is organized or any of the corporate powers vested in a buying cooperative under
26 [sections 1 through 32 28].

27

28 **NEW SECTION.** **Section 11. Amendment of articles of incorporation.** A buying cooperative may
29 amend its articles of incorporation by complying with the following requirements:

30 (1) The proposed amendment must first be:

(a) approved by the board of trustees and then be submitted to a vote of the members at any annual or special meeting of the membership; or

(b) submitted by a petition bearing not less than 20% of the members' signatures, in accordance with the same procedures as those provided for member initiatives provided in [section 17].

(2) The notice of the meeting on the proposed amendment must be included in the proposed amendment. The proposed amendment, with the changes that the members choose to make to the amendment, is considered to be approved on the affirmative vote of not less than two-thirds of those members voting on the amendment at the meeting.

(3) Upon an approval of the amendment by the members, the articles of amendment must be executed on behalf of the buying cooperative by its president or vice president and its corporate seal must be affixed to the articles of amendment and attested by its secretary. The articles of amendment must include in the caption that the articles of amendment are executed pursuant to [sections 1 through ~~32~~ 28] and must state:

(a) the name of the buying cooperative;

(b) the address of its principal office;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state; and

(d) the amendment to its articles of incorporation.

(4) The president or vice president executing the articles of amendment shall also make and attach to the articles of amendment an affidavit stating that the provisions of this section were met.

(5) The articles of amendment and the affidavit must be submitted to the secretary of state for filing, as provided in [section ~~34~~ 27].

NEW SECTION. Section 12. Change of principal office without amendment. A buying cooperative may, without amending its articles of incorporation, upon authorization of its board of trustees, change the location of its principal office. The buying cooperative shall file a certificate of change of principal office executed by its president or vice president, under its seal attested by its secretary, with the secretary of state's office. The buying cooperative shall also file a certificate of change of principal office in each county office in which the buying cooperative's articles of incorporation or any prior certificate of change of principal office of the buying cooperative has been filed. The buying cooperative shall pay the change in location of principal office fee prescribed in [section ~~34~~ 27]. The buying cooperative shall

1 also, within 30 days after the filing of the certificate of change of principal office in any county office,
2 file certified copies of its articles of incorporation and all article of incorporation amendments if not
3 already on file in the county office.

4

5 NEW SECTION. **Section 13. Bylaws.** The original bylaws of a buying cooperative must be
6 adopted by its board of trustees. After adoption by the board of trustees, the bylaws may be adopted,
7 amended, or repealed by its members or, except as authorized in a bylaw, by its board of trustees. A
8 bylaw may not prevent the members from reassuring sole power to amend bylaws or prevent members
9 from otherwise adopting, amending, or repealing bylaws. The bylaws must include the rights and duties
10 of members and trustees and may contain other provisions for the regulation and management of the
11 affairs of the cooperative not inconsistent with [sections 1 through 32 ~~28~~] or with the articles of
12 incorporation.

13

14 NEW SECTION. **Section 14. Membership.** (1) Membership in a buying cooperative is restricted
15 to ~~residential customers and small business customers of a distribution utility, and to other buying~~
16 ~~cooperatives.~~

17 (2) A member may join a buying cooperative by the methods prescribed in the buying
18 cooperative's bylaws, or may be assigned to a buying cooperative by the public service commission ~~upon~~
19 ~~approval of a default supplier license, as provided in [section 36-37]~~ BY COMMISSION RULE.

20

21 NEW SECTION. **Section 15. Nonliability of members, trustees, and officers.** (1) The private
22 property of the members of a buying cooperative is exempt from execution for the debts of the buying
23 cooperative, and a member may not be liable or responsible for any debts of the buying cooperative.

24 (2) A trustee or officer of a buying cooperative or acting for a buying cooperative is not personally
25 liable to the buying cooperative or its members for any actions taken or any failure to take any action as
26 a trustee or officer unless:

27 (a) the trustee or officer fails to perform the trustee's or officer's responsibilities or duties,
28 including those in compliance with [sections 18 and 19]; and

29 (b) the failure to perform constitutes willful misconduct or recklessness.

30

1 **NEW SECTION. Section 16. Meetings of members.** (1) An annual meeting of the members must

2 be held at a time that must be provided in the bylaws.

3 (2) Special meetings of the members may be called by the board of trustees, by any three
4 trustees, by not less than 20% of the members, or by the president.

5 (3) Meetings of members must be held at a place designated in the bylaws. In the absence of a
6 provision in the bylaws that designates a meeting place, all meetings must be held at a place determined
7 by the board of trustees.

8 (4) Except as otherwise provided, written or printed notice stating the time and place of each
9 meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting
10 is called must be given to each member, either personally or by mail, not less than 10 or more than 25
11 days before the date of the meeting.

12 (5) Five percent of all members present in person or 50 members present in person, whichever
13 is fewer, constitute a quorum for the transaction of business at all meetings of the members, but the
14 bylaws may prescribe the presence of a greater percentage or number of the members for a quorum. If
15 less than a quorum is present at a meeting, a majority of those present in person may adjourn the meeting
16 from time to time without further notice.

17 (6) Each member is entitled to one vote on each matter submitted to a vote at a meeting. Voting
18 must be in person but, if the bylaws allow, voting may also be by proxy or by mail, or both or if the
19 bylaws allow, by the method provided in [section 20]. If the bylaws provide for voting by proxy or by mail,
20 the bylaws must also prescribe the conditions under which proxy or mail voting or both are to be
21 exercised. In any event, a person may not vote as a proxy for more than three members at a meeting of
22 the members.

23
24 **NEW SECTION. Section 17. Initiative by members -- approval of trustees not required.** (1)

25 Notwithstanding any other provision of [sections 1 through ~~32~~ 28], there must be submitted to the
26 members of a buying cooperative any proposition embodied in a petition signed by not less than 20% of
27 its members, together with any document submitted with the petition to give the effect to the
28 proposition, either at a special meeting of the members held within 45 days after the presentation of the
29 petition or, if the date of the next annual meeting of members falls within 90 days after the presentation
30 or if the petition specifically requests, at the annual meeting.

1 (2) The approval of the board of trustees is not required for any proposition or document
2 submitted to the members pursuant to this section and approved by them, but any proposition or
3 document is subject to all other applicable provisions of [sections 1 through ~~32~~ 28]. The affidavit or
4 affidavits required to be filed with this proposition or document pursuant to applicable provisions of
5 [sections 1 through ~~32~~ 28] must be modified to be in compliance with the provisions of this section.

6

7 NEW SECTION. **Section 18. Board of trustees -- number -- qualifications -- removal --**
8 **compensation -- joint memberships.** (1) The business and affairs of a buying cooperative must be managed
9 by or under the direction of a board of not less than five trustees, each of whom must be a member of
10 the buying cooperative ~~or of another buying cooperative that is a member of the buying cooperative~~. The
11 bylaws must prescribe the number of trustees, their qualifications, other than those provided for in
12 [sections 1 through ~~32~~ 28], the manner of holding meetings of the board of trustees and of the election
13 of successors to trustees who resign, die, or are otherwise incapable of acting. The bylaws may also
14 provide for the removal of trustees from office and for the election of their successors.

15 (2) Without approval of the membership, trustees:

16 (a) may not receive any salaries for their services as trustees, except trustees may receive the
17 same insurance coverage provided to buying cooperative employees; and

18 (b) except in emergencies, may not be employed by the buying cooperative in a capacity involving
19 compensation.

20 (3) The bylaws may provide that the board of trustees may establish a fixed sum, including
21 expenses of attendance, if any, to be allowed for:

22 (a) attendance at each meeting of the board of trustees or any committee of the board of
23 trustees; or

24 (b) representing the buying cooperative at a meeting or on business whenever representation has
25 been approved by the board.

26 (4) If two or more persons hold a joint membership in a buying cooperative, one person, but not
27 more than one person, from a joint membership may be elected a trustee.

28 (5) The policies of the buying cooperative may provide that benefits provided to employees may
29 be extended to trustees.

30

1 **NEW SECTION.** **Section 19. Trustees -- term -- quorum -- powers.** (1) The trustees of a buying
2 cooperative named in articles of incorporation, ~~consolidation, merger, or conversion~~ shall hold office until
3 the next following annual meeting of the members or until their successors have been elected and
4 qualified. At each annual meeting or, in case of failure to hold the annual meeting as specified in the
5 bylaws, at a special meeting called for that purpose, the members shall elect trustees who may serve for
6 1-, 2-, or 3-year terms. Each trustee shall hold office for the term for which that trustee is elected or until
7 the trustee's successor has been elected and qualified.

8 (2) A majority of the board of trustees constitutes a quorum.

9 (3) The board of trustees may exercise all of the powers of a buying cooperative, except those
10 powers that are conferred upon the members by [sections 1 through ~~32~~ 28] or by its articles of
11 incorporation or bylaws.

12
13 **NEW SECTION.** **Section 20. Voting districts.** (1) Notwithstanding any other provisions of
14 [sections 1 through ~~32~~ 28], the bylaws may provide that the territory or geographic area in which a buying
15 cooperative operates to serve its members, or a class or classes of members, must be divided into two
16 or more voting districts and that in respect to each voting district:

17 (a) the members or the members of a membership class or classes residing in the voting district
18 shall elect a designated number of trustees;

19 (b) the members or the members of a membership class or classes residing in the voting district
20 shall elect a designated number of delegates; or

21 (c) the members or the members of a membership class or classes shall elect both trustees and
22 delegates.

23 (2) This section does not restrict or prohibit a buying cooperative from using a combination of
24 voting districts based on members or classes of members with a territory or geographical area or voting
25 districts at large based on members or classes of members using one or more kinds of services or
26 products provided by the buying cooperative.

27 (3) The bylaws must prescribe the manner in which the voting districts and the members or
28 membership classes of those voting districts and the delegates and trustees, if any, elected from those
29 voting districts shall function and the powers of the delegates, which may include the power to elect
30 trustees and adopt, amend, or repeal the bylaws of a buying cooperative as provided in [sections 1

1 through ~~32~~ 28].

2 (4) A member at a voting district meeting and a delegate at a meeting may not vote by proxy or
3 by mail.

4

5 NEW SECTION. **Section 21. Officers.** The officers of a buying cooperative consist of a president,
6 vice president, secretary, and treasurer who are elected annually by and from the board of trustees. A
7 person may not continue to hold any of the above offices after that person has ceased to be a trustee.
8 The offices of secretary and of treasurer may be held by the same person. The board of trustees may also
9 elect or appoint other buying cooperative officers, agents, or employees that it considers necessary or
10 advisable and shall prescribe the powers and duties of those other officers, agents, or employees. An
11 officer may be removed from office and a successor elected in the manner prescribed in the bylaws.

12

13 NEW SECTION. **Section 22. Authority to take acknowledgments.** A person who is authorized to
14 take acknowledgments under the laws of this state may not be disqualified from taking acknowledgments
15 of instruments executed in favor of a buying cooperative or to which it is a party by reason of being an
16 officer, trustee, director, or member of the buying cooperative.

17

18 NEW SECTION. **Section 23. Refunds to members -- retention of unclaimed refunds.** (1) Revenue
19 of a buying cooperative for any fiscal year must, unless otherwise determined by a vote of the members,
20 be distributed by the buying cooperative to its members as patronage refunds, prorated in accordance
21 with the patronage of the buying cooperative by the respective members paid for during the fiscal year,
22 whenever the revenue exceeds the amount necessary to:

23 (a) defray expenses of the buying cooperative and of the operation and maintenance of its
24 facilities during the fiscal year;

25 (b) pay interest and principal obligations of the buying cooperative coming due in the fiscal year;

26 (c) finance or provide a reserve for the financing of the construction or acquisition by the buying
27 cooperative of additional facilities to the extent determined by the board of trustees;

28 (d) provide a reasonable reserve for working capital; AND

29 (e) provide a reserve for the payment of indebtedness of the buying cooperative maturing more
30 than 1 year after the date of the incurrence of the indebtedness in an amount not less than the total of

1 the interest and principal payments required to be made during the next fiscal year; and
2 ~~—— (f) provide a fund that may not be less than 2% or more than 5% of the balance remaining, for~~
3 ~~education in cooperation and for the dissemination of information concerning the effective use of electric~~
4 ~~energy and other services made available by the buying cooperative.~~

5 (2) This section may not be construed to prohibit the payment by a buying cooperative of all or
6 any part of its indebtedness prior to the date when the payment becomes due.

7 (3) A buying cooperative shall, upon the action of the board of trustees, retain redeemed
8 patronage refunds that are allocated to its members and that remain unclaimed for a period of 5 years
9 after the end of the year in which the refunds are given. Unclaimed redeemed patronage refunds retained
10 by the buying cooperative must be used for educational purposes.

11
12 **NEW SECTION. Section 24. Disposition or encumbrance of property.** (1) Except as provided in
13 subsection (2), or other than as arises relating to the issuance of stock or for any sale, mortgage, lease,
14 transfer, or other disposition or encumbrance of property to any entity owned or controlled by the buying
15 cooperative or in which the buying cooperative holds a majority interest or for any disposition or
16 encumbrance arising from or in connection with the issuance of shares of stock, if any is authorized, a
17 buying cooperative may not sell, mortgage, lease, or otherwise dispose of or encumber all or any
18 substantial portion of its property unless the sale, mortgage, lease, or other disposition or encumbrance
19 is authorized at a duly held meeting of members of the buying cooperative by an affirmative vote of not
20 less than two-thirds of all the members of the buying cooperative and unless the notice of the proposed
21 sale, mortgage, lease, or other disposition or encumbrance is contained in the notice of the meeting.

22 (2) The board of trustees of a buying cooperative, without authorization by the members of the
23 buying cooperative, has the full power and authority to authorize the execution and delivery of a mortgage
24 or mortgages or a deed or deeds of trust upon or the pledging or encumbrancing of any or all of the
25 property, assets, rights, privileges, licenses, franchises, and permits of the buying cooperative, whether
26 acquired or to be acquired and wherever situated, as well as the revenue and income from the property,
27 assets, rights, privileges, licenses, franchises, and permits of the buying cooperative, all upon the terms
28 and conditions that the board of trustees determines, to secure any indebtedness of the buying
29 cooperative or any entity owned or controlled by the buying cooperative or in which the buying
30 cooperative owns a majority interest to the United States or any instrumentality or agency of the United

1 States or to any other financing sources within the United States.

2 (3) Before a meeting is held to vote on authorization of disposition of buying cooperative property
3 as provided in subsection (1), the board of trustees shall:

4 (a) have the property appraised by three appraisers chosen by the board and not associated with
5 the buying cooperative or a proposed buyer of buying cooperative property;

6 (b) notify all buying cooperative members, at least 90 days in advance, of a meeting to vote on
7 disposition of buying cooperative property. Detailed proposals for disposition of the property must
8 accompany the notice; AND

9 ~~(c) at least 30 days before the meeting, notify all other buying cooperatives situated and~~
10 ~~operating in the state that the property is available for disposition and include with the notice one copy~~
11 ~~of each appraisal on the buying cooperative property; and~~

12 ~~(d)(c) at least 30 days before the meeting, mail to all members any alternative proposal made by~~
13 ~~buying cooperative members if it has been submitted to the board and signed by 50 or more members.~~

14 (4) The vote on property disposition may take place at an annual meeting if the board notifies the
15 members as provided in this section.

16 ~~(5) This section does not apply to the transfer of buying cooperative property in a merger or~~
17 ~~consolidation of buying cooperatives.~~

18
19 ~~NEW SECTION. Section 25. Long-term indebtedness -- membership approval. Before a buying~~
20 ~~cooperative may create or enter into an agreement that results in any direct or indirect obligation for the~~
21 ~~repayment of long-term bonded indebtedness for financing directly or indirectly the construction,~~
22 ~~maintenance, or operation of nuclear power generating facilities that may result in a rate increase to the~~
23 ~~buying cooperative's members for repayment of the obligation, the buying cooperative must receive~~
24 ~~approval from a majority of those members present and voting at the meeting. The approval must be~~
25 ~~obtained at a special meeting held for that purpose.~~

26
27 ~~NEW SECTION. Section 26. Procedure for merger. One or more buying cooperatives, each~~
28 ~~designated a "merging buying cooperative", may merge into another surviving buying cooperative by~~
29 ~~complying with the following requirements:~~

30 ~~(1) In order for a merger and the proposed articles of merger to be valid, the board of trustees of~~

1 ~~each merging buying cooperative and the board of trustees of the surviving buying cooperative shall first~~
2 ~~approve the merger. The proposed articles of merger must state in the caption that they are executed~~
3 ~~pursuant to [sections 1 through 32] and must state:~~
4 ~~—— (a) the name of each merging buying cooperative, the address of its principal office, and the date~~
5 ~~of the filing of its articles of incorporation in the office of the secretary of state;~~
6 ~~—— (b) the name of the surviving buying cooperative and the address of its principal office;~~
7 ~~—— (c) a statement that the merging buying cooperatives elect to be merged into the surviving buying~~
8 ~~cooperative;~~
9 ~~—— (d) the terms and conditions of the merger and the mode of carrying the merger into effect,~~
10 ~~including the manner and basis of converting the memberships in the merging buying cooperative or~~
11 ~~cooperatives into memberships in the surviving buying cooperative and the issuance of certificates of~~
12 ~~membership in respect of the converted memberships; and~~
13 ~~—— (e) any provisions not inconsistent with [sections 1 through 32] considered necessary or advisable~~
14 ~~for the conduct of the business and affairs of the surviving buying cooperative.~~
15 ~~—— (2) The proposition for the merger of the merging buying cooperatives into the surviving buying~~
16 ~~cooperative and the proposed articles of merger approved by the board of trustees of the respective~~
17 ~~buying cooperatives that are parties to the proposed merger must be submitted to a vote of the members~~
18 ~~of each buying cooperative at any annual or special meeting of the buying cooperative. The meeting~~
19 ~~notice must include the full particulars concerning the proposed merger. The proposed merger and the~~
20 ~~proposed articles of merger are considered to be approved upon the affirmative vote of not less than~~
21 ~~two-thirds of those members of each buying cooperative voting on the merger at the meeting.~~
22 ~~—— (3) Upon approval of the merger by the members of the respective buying cooperatives parties~~
23 ~~to the proposed merger, articles of merger in the form approved must be executed on behalf of each~~
24 ~~buying cooperative by its president or vice president and the buying cooperative's seal must be affixed~~
25 ~~to the articles of merger and attested by the buying cooperative's secretary. The president or vice~~
26 ~~president of each buying cooperative executing the articles of merger shall also make and annex to the~~
27 ~~articles of merger, an affidavit stating that the provisions of this section were duly complied with by the~~
28 ~~buying cooperative.~~
29 ~~—— (4) The articles of merger and affidavits must be submitted to the secretary of state for filing as~~
30 ~~provided in [sections 1 through 32].~~

1
2 ~~NEW SECTION. Section 27. Procedure for consolidation. Two or more buying cooperatives~~
3 ~~designated a "consolidating buying cooperative", may consolidate into a new buying cooperative by~~
4 ~~complying with the following requirements:~~

5 ~~(1) In order for a consolidation and the proposed articles of consolidation to be valid, the board~~
6 ~~of trustees of each consolidating buying cooperative and the board of trustees of the new buying~~
7 ~~cooperative shall first approve the consolidation. The proposed articles of consolidation must state in the~~
8 ~~caption that they are executed pursuant to [sections 1 through 32] and must state:~~

9 ~~(a) the name of each consolidating buying cooperative, the address of its principal office, and the~~
10 ~~date of the filing of its articles of incorporation in the office of the secretary of state;~~

11 ~~(b) the name of the new buying cooperative and the address of its principal office;~~

12 ~~(c) the names and addresses of the persons who constitute the first board of trustees of the new~~
13 ~~buying cooperative;~~

14 ~~(d) the terms and conditions of the consolidation and the mode of carrying the consolidation into~~
15 ~~effect, including the manner and basis of converting memberships in each consolidating buying~~
16 ~~cooperative into memberships in the new buying cooperative and the issuance of certificates of~~
17 ~~memberships in respect of those converted memberships; and~~

18 ~~(e) any provisions not inconsistent with [sections 1 through 32] considered necessary or advisable~~
19 ~~for the conduct of the business and affairs of the new buying cooperative.~~

20 ~~(2) The proposition for the consolidation of the consolidating buying cooperatives into the new~~
21 ~~buying cooperative and the proposed articles of consolidation approved by the board of trustees of each~~
22 ~~consolidating buying cooperative must be submitted to a vote of the members of each buying cooperative~~
23 ~~at any annual or special meeting of the buying cooperative. The meeting notice must include the full~~
24 ~~particulars concerning the proposed consolidation. The proposed consolidation and the proposed articles~~
25 ~~of consolidation are considered to be approved upon the affirmative vote of not less than two-thirds of~~
26 ~~those members of each consolidating buying cooperative voting on the proposed consolidation at the~~
27 ~~meeting.~~

28 ~~(3) Upon approval of the consolidation by the members of the respective consolidating buying~~
29 ~~cooperatives, articles of consolidation in the form approved must be executed on behalf of each~~
30 ~~consolidating buying cooperative by its president or vice president and the buying cooperative's seal must~~

~~be affixed to the articles of consolidation and attested by the buying cooperative's secretary. The president or vice president of each consolidating buying cooperative executing the articles of consolidation shall also make and annex to the articles of consolidation an affidavit stating that the provisions of this section were duly complied with by the buying cooperative.~~

~~(4) The articles of consolidation and affidavits must be submitted to the secretary of state for filing, as provided in [sections 1 through 32].~~

~~NEW SECTION. Section 28. Effect of merger or consolidation. The effect of consolidation or merger must be as follows:~~

~~(1) The several buying cooperatives that are party to the consolidation or merger must be a single buying cooperative which, in the case of a consolidation, must be the new buying cooperative provided for in the articles of consolidation and, in the case of a merger, must be that buying cooperative designated in the articles of merger as the surviving buying cooperative, and the separate existence of all buying cooperatives that are party to the consolidation or merger, except the new or surviving buying cooperative, shall cease.~~

~~(2) (a) The new or surviving buying cooperative has all the rights, privileges, immunities, and powers and is subject to all the duties and liabilities of a buying cooperative organized under the provisions of [sections 1 through 32] and possesses:~~

~~(i) the rights, privileges, and immunities;~~

~~(ii) franchises, of a public as well as of a private nature;~~

~~(iii) property, real and personal;~~

~~(iv) applications for membership;~~

~~(v) debts due on whatever account; and~~

~~(vi) all other choses in action of each of the consolidating or merging buying cooperatives.~~

~~(b) Each interest of or belonging or due to each of the buying cooperatives that are consolidated or merged must be taken and considered to be transferred to and vested in the new or surviving buying cooperative without further act or deed, and the title to any real estate or any interest in the real estate under the laws of this state vested in a buying cooperative may not revert or be in any way impaired by reason of the consolidation or merger.~~

~~(3) The new or surviving buying cooperative is responsible and liable for all of the liabilities and~~

~~1 obligations of each of the buying cooperatives consolidated or merged. Any claim existing or action or
2 proceeding pending by or against any of the buying cooperatives may be prosecuted as if the
3 consolidation or merger had not taken place, but the new or surviving buying cooperative may be
4 substituted in its place.~~

~~5 (4) The rights of creditors or any liens upon the property of consolidated or merged buying
6 cooperatives may not be impaired by a consolidation or merger.~~

~~7 (5) In the case of a consolidation, the articles of consolidation are considered to be the articles
8 of incorporation of the new buying cooperative. In the case of a merger, the articles of incorporation of
9 the surviving buying cooperative are considered to be amended to the extent, if any, that changes in the
10 articles of incorporation of the surviving buying cooperative are provided for in the articles of merger.~~

11

12 **NEW SECTION. Section 25. Dissolution of buying cooperative that has not commenced business.**

13 (1) A buying cooperative that has not commenced business may dissolve voluntarily by delivering to the
14 secretary of state articles of dissolution, executed on behalf of the buying cooperative by a majority of
15 the incorporators. The articles of dissolution must state:

16 (a) the name of the buying cooperative;

17 (b) the address of its principal office;

18 (c) the date of its incorporation;

19 (d) that the buying cooperative has not commenced business;

20 (e) that the amount, if any, actually paid in on account of membership fees, less any part of the
21 amount disbursed for necessary expenses, has been returned to those entitled to money ~~and that all~~
22 ~~easements have been released to the grantors;~~

23 (f) that there are not any unpaid buying cooperative debts; and

24 (g) that a majority of the incorporators elect that the buying cooperative be dissolved.

25 (2) The articles of dissolution must be submitted to the secretary of state for filing, as provided
26 in [sections 1 through ~~32~~ 28].

27

28 **NEW SECTION. Section 26. Dissolution and winding up of buying cooperative that has**
29 **commenced business.** A buying cooperative that has commenced business may dissolve voluntarily and
30 wind up its affairs in the following manner:

(1) The board of trustees shall first recommend that the buying cooperative be dissolved voluntarily, and after that, the proposition that the buying cooperative be dissolved must be submitted to the members of the buying cooperative at any annual or special meeting. The notice of the annual or special meeting must include the proposition. The proposed voluntary dissolution is considered approved upon the affirmative vote of not less than two-thirds of all of the members of the buying cooperative.

(2) Upon approval of the voluntary dissolution, a certificate of election to dissolve is executed on behalf of the buying cooperative by its president or vice president and its corporate seal must be affixed to the certificate and attested by its secretary or assistant secretary. The certificate must state the:

(a) name of the buying cooperative;

(b) address of its principal office;

(c) names and addresses of its trustees; and

(d) total number of members who voted for and against the voluntary dissolution of the buying cooperative. The president or vice president executing the certificate shall also make and annex to the certificate an affidavit stating that the provisions of this subsection were complied with. The certificate and affidavit must be submitted to the secretary of state for filing as provided in [sections 1 through 32 28].

(3) Upon the filing of the certificate provided for in subsection (2) and an affidavit with the secretary of state, the buying cooperative shall cease to carry on its business except to the extent necessary for winding up the business of the buying cooperative, but its corporate existence must continue until articles of dissolution have been filed by the secretary of state.

(4) After the filing of the certificate and affidavit with the secretary of state, the board of trustees shall immediately mail a notice of the winding up proceedings to each known creditor and claimant and publish the notice once a week for 2 successive weeks in a newspaper of general circulation in the county in which the principal office of the buying cooperative is located.

(5) The board of trustees has the full power to wind up and settle the affairs of the buying cooperative and shall proceed to collect the debts owing to the buying cooperative, convey and dispose of its property and assets, pay, satisfy, and discharge its debts, obligations, and liabilities, and do all other things required to liquidate its business and affairs, and after paying or adequately providing for the payment of all its debts, obligations, and liabilities, the board of trustees shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each buying

1 cooperative member:

2 (a) during the period preceding the date of the filing of the certificate that encompasses the
3 longest period of time in effect prior to the buying cooperative dissolution for determination of members
4 who are entitled to the patronage refunds for the capital redemption period; or

5 (b) if the buying cooperative was not in existence for the period provided for in subsection (5)(a),
6 then during the period of its existence.

7 (6) When all debts, liabilities, and obligations of the buying cooperative have been paid and
8 discharged or adequate provision has been made in return for all debts, liabilities, and obligations and all
9 of the remaining property and assets of the buying cooperative are distributed to the members pursuant
10 to the provisions of this section, the board of trustees shall authorize the execution of articles of
11 dissolution that must be executed on behalf of the buying cooperative by its president or vice president
12 and its corporate seal must be affixed to the articles of dissolution and attested by its secretary. The
13 articles of dissolution must include in the caption that the articles of dissolution are executed pursuant
14 to [sections 1 through ~~32~~ 28] and must state:

15 (a) the name of the buying cooperative;

16 (b) the address of the principal office of the buying cooperative;

17 (c) that the buying cooperative has up to this time filed with the secretary of state a certificate
18 of election to dissolve and the date on which the certificate was filed;

19 (d) that all debts, obligations, and liabilities of the buying cooperative have been paid and
20 discharged or that adequate provision has been made in return for all debts, obligations, and liabilities;

21 (e) that all the remaining property and assets of the buying cooperative have been distributed
22 among the members in accordance with the provisions of this section; and

23 (f) that there are not any actions or suits pending against the buying cooperative. The president
24 or vice president executing the articles of dissolution shall also make and annex to the articles of
25 dissolution an affidavit stating that the provisions of this subsection (6) were met. The articles of
26 dissolution and affidavit, accompanied by proof of the publication required in this subsection, must be
27 submitted to the secretary of state for filing as provided in [sections 1 through ~~32~~ 28].

28

29 NEW SECTION. Section 27. Incorporation, amendment, ~~consolidation, merger, conversion,~~ and
30 dissolution filings. (1) Articles of incorporation, amendment, ~~consolidation, merger, conversion,~~ or

dissolution, when executed and accompanied by an affidavit that may be required by applicable provisions of [sections 1 through ~~32~~ 28], must be presented to the secretary of state for filing. If the secretary of state finds that the articles presented conform to the requirements of [sections 1 through ~~32~~ 28], the secretary of state shall upon the payment of the fees provided for in 35-18-502, file the articles, and upon the filing, the incorporation, amendment, ~~consolidation, merger, conversion,~~ or dissolution is legally effective.

(2) The secretary of state, immediately upon the filing of any articles pursuant to [sections 1 through ~~32~~ 28], shall transmit a certified copy of the filing to the county clerk of the county in which the principal office of each buying cooperative or corporation affected by the incorporation, amendment, ~~consolidation, merger, conversion,~~ or dissolution is located. The clerk of any county, upon receipt of the certified copy, shall file and index the certified copy in the records of the clerk's office. Failure of the secretary of state or of a clerk of a county to comply with the provisions of this section does not invalidate the articles.

(3) The provisions of this section also apply to certificates of election to dissolve and affidavits of compliance executed pursuant to [section ~~30~~ 26].

NEW SECTION. Section 28. Exemption from taxes. Buying cooperatives transacting business in this state pursuant to [sections 1 through ~~32~~ 28] are exempt from all excise and income taxes, OTHER THAN ANY APPLICABLE FEES TO FUND THE MONTANA CONSUMER COUNSEL AND THE PUBLIC SERVICE COMMISSION AS PROVIDED IN TITLE 69, CHAPTER 1, PARTS 2 AND 4.

Section 29. Section 69-8-103, MCA, is amended to read:

"69-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers and purchases electric energy and takes title to electric energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority,

1 partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as
2 security, the assignee's interest in or right to transition property.

3 (3) "Board" means the board of investments created by 2-15-1808.

4 (4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent
5 or intermediary in the sale and purchase of electric energy but that does not take title to electric energy.

6 (5) "Cooperative utility" means:

7 (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

8 (b) an existing municipal electric utility as of May 2, 1997.

9 (6) "Customer" or "consumer" means a retail electric customer or consumer. The university of
10 Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each
11 considered a single retail electric customer or consumer with a single individual load.

12 (7) "Default supplier" means a distribution utility or a person that has received a DEFAULT SUPPLIER
13 license pursuant to [section 37] FROM THE COMMISSION.

14 ~~(7)~~(8) "Distribution facilities" means those facilities by and through which electricity is received
15 from a transmission services provider and distributed to the customer and that are controlled or operated
16 by a distribution utility.

17 ~~(8)~~(9) "Distribution services provider" means a person controlling or operating distribution facilities
18 for distribution of electricity to the public.

19 ~~(9)~~(10) "Electricity supplier" means any person, including aggregators, market aggregators,
20 brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

21 ~~(10)~~(11) "Financing order" means an order of the commission adopted in accordance with
22 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of
23 transition bonds.

24 ~~(11)~~(12) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including
25 but not limited to:

26 (i) distribution;

27 (ii) connection;

28 (iii) disconnection; and

29 (iv) termination rates and charges that are authorized by the commission in a financing order to
30 permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the

1 transition costs and acquiring transition property through a plan approved by the commission in the
2 financing order, including the costs of issuing, servicing, and retiring transition bonds.

3 (b) If requested by the utility in the utility's application for a financing order, fixed transition
4 amounts must include nonbypassable rates or charges to recover federal and state taxes in which the
5 transition cost recovery period is modified by the transactions approved in the financing order.

6 ~~(12)~~(13) "Functionally separate" means a utility's separation of the utility's electricity supply,
7 transmission, distribution, and unregulated retail energy services assets and operations.

8 ~~(13)~~(14) "Local governing body" means a local board of trustees of a rural electric cooperative.

9 ~~(14)~~(15) "Low-income customer" means those energy consumer households and families with
10 incomes at or below industry-recognized levels that qualify those consumers for low-income
11 energy-related assistance.

12 ~~(15)~~(16) "Nonbypassable rates or charges" means rates or charges approved by the commission
13 imposed on a customer to pay the customer's share of transition costs or universal system benefits
14 program costs even if the customer has physically bypassed either the utility's transmission or distribution
15 facilities.

16 ~~(16)~~(17) "Pilot program" means a program using a representative sample of residential and small
17 commercial customers to assist in developing and offering customer choice of electric supply for all
18 residential and commercial customers.

19 ~~(17)~~(18) "Public utility" means any electric utility regulated by the commission pursuant to Title
20 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

21 (19) "Small customer" means a residential customer or a small ~~business~~ COMMERCIAL customer
22 who has AN INDIVIDUAL ACCOUNT WITH ~~accounts possessing an aggregated~~ AVERAGE monthly peak DEMAND
23 IN THE PREVIOUS CALENDAR YEAR OF LESS THAN 100 kilowatts or less A NEW COMMERCIAL CUSTOMER WITH AN
24 ESTIMATED AVERAGE MONTHLY DEMAND OF LESS THAN 100 KILOWATTS OR A PUBLIC UTILITY DISTRIBUTION SERVICES
25 PROVIDER THAT HAS OPENED ACCESS ON ITS DISTRIBUTION SYSTEM PURSUANT TO [THIS ACT].

26 ~~(18)~~(20) "Transition bondholder" means a holder of transition bonds including trustees, collateral
27 agents, and other entities acting for the benefit of that holder.

28 ~~(19)~~(21) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust
29 certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds
30 issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from

1 transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire
2 transition property.

3 ~~(20)~~(22) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer
4 to pay the customer's share of transition costs.

5 ~~(21)~~(23) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending
6 when a utility customer does not have any liability for payment of transition costs.

7 ~~(22)~~(24) "Transition costs" means:

8 (a) a public utility's net verifiable generation-related and electricity supply costs, including costs
9 of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law
10 requiring retail open access or customer choice;

11 (b) those costs that include but are not limited to:

12 (i) regulatory assets and deferred charges that exist because of current regulatory practices and
13 can be accounted for up to the effective date of the commission's final order regarding a public utility's
14 transition plan and conservation investments made prior to universal system benefits charge
15 implementation;

16 (ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

17 (iii) existing generation investments and supply commitments or other obligations incurred before
18 May 2, 1997, and costs arising from these investments and commitments;

19 (iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power
20 purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to
21 issuing transition bonds; and

22 (v) the costs of refinancing and retiring of debt or equity capital of the public utility and
23 associated federal and state tax liabilities or other utility costs for which the use of transition bonds would
24 benefit customers.

25 ~~(23)~~(25) "Transition period" means the period beginning on July 1, 1998, and ending on July 1,
26 2002, unless otherwise extended pursuant to this chapter, during which utilities may phase in customer
27 choice of electricity supplier.

28 ~~(24)~~(26) "Transition property" means the property right created by a financing order including
29 without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to
30 all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed

1 transition amounts that are the subject of a financing order including those nonbypassable rates and other
2 charges and fixed transition amounts that are authorized by the commission in the financing order to
3 recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition
4 costs and acquiring transition property including the costs of issuing, servicing, and retiring transition
5 bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other
6 right created under this section or created in the financing order and assignable under this chapter or
7 assignable pursuant to a financing order is only a contract right.

8 ~~(25)~~(27) "Transmission facilities" means those facilities that are used to provide transmission
9 services as determined by the federal energy regulatory commission and the commission.

10 ~~(26)~~(28) "Transmission services provider" means a person controlling or operating transmission
11 facilities.

12 ~~(27)~~(29) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed
13 on a customer to pay the customer's share of universal system benefits program costs.

14 ~~(28)~~(30) "Universal system benefits programs" means public purpose programs for:

- 15 (a) cost-effective local energy conservation;
- 16 (b) low-income customer weatherization;
- 17 (c) renewable resource projects and applications, including those that capture unique social and
18 energy system benefits or provide transmission and distribution system benefits;
- 19 (d) research and development programs related to energy conservation and renewables;
- 20 (e) market transformation designed to encourage competitive markets for public purpose
21 programs; and
- 22 (f) low-income energy assistance.

23 ~~(29)~~(31) "Utility" means any public utility or cooperative utility."
24

25 ~~Section 34. Section 69-8-203, MCA, is amended to read:~~

26 ~~"69-8-203. Public utility -- customer choice -- continued service -- education of customers. (1)~~

27 ~~A customer is permitted to choose an electricity supplier pursuant to the deadlines established in~~

28 ~~69-8-201. Public utilities shall propose a method for customers to choose an electricity supplier.~~

29 ~~(2) If a customer has not chosen an electricity supplier by the end of the transition period, a public~~

30 ~~utility shall propose a method in the public utility's transition plans for assigning that customer to an~~

1 ~~electricity supplier.~~

2 ~~—— (3) The commission shall designate a default supplier to provide electricity supply service to small~~
3 ~~customers as provided in [section 37].~~

4 ~~—— (3)(4) A public utility may phase in customer choice to promote the orderly transition to a~~
5 ~~competitive market environment pursuant to the deadlines in 69-8-201.~~

6 ~~—— (4)(5) Public utilities shall educate their customers about customer choice so that customers may~~
7 ~~make an informed choice of an electricity supplier. This education process must give special emphasis to~~
8 ~~education efforts during the transition period."~~

9

10 **SECTION 30. SECTION 69-8-201, MCA, IS AMENDED TO READ:**

11 **"69-8-201. Public utility -- transition to customer choice -- waiver. (1) A public utility shall, except**
12 **as provided in this section, adhere to the following deadlines:**

13 (a) On or before July 1, 1998, all customers with individual loads greater than 1,000 kilowatts
14 and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that
15 aggregate to 1,000 kilowatts or greater must have the opportunity to choose an electricity supplier.

16 (b) Subject to subsection (2), and as soon as is administratively feasible but before July 1, 2002,
17 all other public utility customers must have the opportunity to choose an electricity supplier.

18 (2) (a) Except as provided for in subsection ~~(3)~~ (4), the commission may determine that additional
19 time is necessary for customers identified in subsection (1)(b); however, the implementation of full
20 customer choice may not be delayed beyond July 1, 2004.

21 (b) A determination by the commission that additional time is necessary for subsection (1)(b)
22 customers must be made at least 60 days in advance of the scheduled date and must be based on one
23 or more of the following considerations:

24 (i) implementation would not be administratively feasible;

25 (ii) implementation would materially affect the reliability of the electric system; or

26 (iii) Montana customers or electricity suppliers would be disadvantaged due to lack of a
27 competitive electricity supply market.

28 **(3) The commission shall designate the public utility or one or more default suppliers, pursuant**
29 **to [section 37], to provide regulated default service for those small customers of a public utility that are**
30 **not being served by a competitive ELECTRICITY supplier, until the commission determines that a competitive**

1 market exists. THE TRANSITION ADVISORY COMMITTEE SHALL REVIEW AND ADDRESS THE NEED FOR CONTINUED
2 DEFAULT SUPPLY SERVICE AND MAKE RECOMMENDATION TO THE 57TH LEGISLATURE.

3 ~~(3)~~(4) Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, and 69-8-402, a
4 public utility currently doing business in Montana as part of a single integrated multistate operation, no
5 portion of which lies within the basin of the Columbia River, may:

6 (a) defer compliance with this chapter until a time that the public utility can reasonably implement
7 customer choice in the state of the public utility's primary service territory, except that the public utility
8 shall file a transition plan pursuant to 69-8-202 to provide transition to customer choice on or before July
9 1, 2002, and must have completed the transition period to customer choice by July 1, 2006; and

10 (b) petition the commission to delay the public utility's transition plan filing until July 1, 2004.

11 ~~(4)~~(5) Upon a request from a public utility with fewer than 50 customers, the commission shall
12 waive compliance with the requirements of 69-8-104, 69-8-202 through 69-8-204, 69-8-208 through
13 69-8-211, 69-8-402, and this section."

14
15 ~~Section 35. Section 69-8-210, MCA, is amended to read:~~

16 ~~"69-8-210. Public utilities -- electricity supply. (1) On the effective date of a commission order~~
17 ~~implementing a public utility's transition plan pursuant to 69-8-202, the public utility shall remove its~~
18 ~~generation assets from the rate base.~~

19 ~~(2) During the transition period, the commission may establish cost-based prices for electricity~~
20 ~~supply service for customers that do not have a choice of electricity supply service or that have not yet~~
21 ~~chosen an electricity supplier.~~

22 ~~(3) If the transition period is extended, then the customers' distribution services provider shall:~~

23 ~~(a) extend any cost-based contract with the distribution services provider's affiliate supplier for~~
24 ~~a term not more than 3 years; or~~

25 ~~(b) purchase electricity from the market; and~~

26 ~~(c) use a mechanism that recovers electricity supply costs in rates to ensure that those costs are~~
27 ~~fully recovered.~~

28 ~~(4)(2) If a public utility intends to be an electricity supplier through an unregulated division, then~~
29 ~~the public utility must be licensed as an electricity supplier pursuant to 69-8-404."~~

Section 31. Section 69-8-403, MCA, is amended to read:

"69-8-403. Commission authority -- rulemaking authority. (1) Beginning on the effective date of a commission order regarding a public utility's transition plan, the commission shall regulate the public utility's retail transmission and distribution services within the state of Montana, as provided in this chapter, and may not regulate the price of electricity supply except as electricity supply may be procured AS PROVIDED IN THIS SECTION:

(A) ~~during the transition period by the the ONE OR MORE default supplier SUPPLIERS FOR THOSE CUSTOMERS NOT BEING SERVED BY A COMPETITIVE SUPPLIER; OR~~

(B) ~~by the distribution function of a public utility for those customers that have not ARE NOT BEING SERVED BY A COMPETITIVE ELECTRICITY SUPPLIER chosen an electricity supplier or for those customers that have not yet been assigned an electricity to an alternative default supplier as provided in (section 37) BY COMMISSION RULES.~~ During the transition period, those procurements may include a cost-based contract from a supply affiliate or an unregulated division.

~~(2) If the transition period is extended for certain customers because the commission finds that workable competition in the electricity supply market does not exist, then the commission shall continue to regulate the provision of electricity supply by distribution services providers in accordance with 69-8-210.~~

~~(3)~~(2) The commission shall decide if there is workable competition in the electricity supply market by determining whether competition is sufficient to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market share estimates.

~~(4)~~(3) The commission shall license electricity suppliers and enforce licensing provisions pursuant to 69-8-404.

~~(5)~~(4) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

~~(6)~~(5) The commission shall establish just and reasonable rates through established ratemaking principles for public utility distribution and transmission services and shall regulate these services. The commission may approve rates and charges for electricity distribution and transmission services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with this chapter, and on the public utility's transition plan.

~~(7)(6)~~ The commission shall certify that a cooperative utility has adopted a transition plan that complies with this chapter. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.

~~(8)(7)~~ The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

~~(8) THE COMMISSION SHALL LICENSE DEFAULT SUPPLIERS AND ENFORCE DEFAULT LICENSING PROVISIONS PURSUANT TO 69-8-404.~~

~~(9) THE COMMISSION SHALL PROMULGATE RULES FOR THE LICENSING OF DEFAULT SUPPLIERS ON OR BEFORE DECEMBER 1, 1999.~~

~~(10) UNTIL THE COMMISSION HAS DETERMINED THAT WORKABLE COMPETITION HAS DEVELOPED FOR SMALL CUSTOMERS, A DEFAULT SUPPLIER'S OBLIGATION TO SERVE REMAINS.~~

~~(9)(8)(11)~~ In addition to promulgating rules expressly provided for in this chapter, the commission may promulgate any other rules necessary to carry out the provision of this chapter.

~~(10)(9)(12)~~ This chapter does not give the commission the authority to:

(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with this chapter; or

(b) compel any change to a cooperative utility's certification filing made pursuant to this chapter."

~~NEW SECTION. Section 37. Default supplier license LICENSES AND OBLIGATION TO SERVE. (1) (a) A person may submit an application to the commission to become the default supplier for the small customers of a public utility whose customers have access to choice of an electricity supplier. A DEFAULT SUPPLIER IS OBLIGATED TO PROVIDE A SINGLE ELECTRIC SUPPLY SERVICE TO ALL SMALL CUSTOMERS OF A PUBLIC UTILITY WHO ARE NOT BEING SERVED BY A COMPETITIVE SUPPLIER. A DEFAULT SUPPLIER MAY ALSO OFFER AN ADDITIONAL ELECTRIC SUPPLY SERVICE THAT WILL INCLUDE A COMPONENT OF RENEWABLE ENERGY. A DEFAULT SUPPLIER MAY NOT OFFER OTHER SUPPLY SERVICES UNLESS THE DEFAULT SUPPLIER FORMS A SEPARATE ENTITY. There may be only one OR MORE default supplier SUPPLIERS for a public utility's small customers. The public utility shall serve as the default supplier if another person is not designated by the commission as the A default supplier pursuant to the provisions of this section.~~

~~(b) All small customers of a distribution utility must be offered electricity supply service by the default supplier until UNTIL the commission has determined that workable competition has developed for~~

1 ~~small customers, A DEFAULT SUPPLIER'S OBLIGATION TO SERVE REMAINS. After a determination has been made,~~
2 ~~the commission must SHALL provide a method for ensuring that electricity supply service remains available~~
3 ~~to small customers.~~

4 ~~—— (2) The commission shall establish rules for filing and considering a default supplier application,~~
5 ~~determining the length of default supplier status, and revoking default supplier status. The commission~~
6 ~~rules must provide for allowing the public utility and other interested persons to participate. A PERSON MAY~~
7 ~~SUBMIT AN APPLICATION TO THE COMMISSION TO BECOME A DEFAULT SUPPLIER FOR THOSE SMALL CUSTOMERS OF A~~
8 ~~PUBLIC UTILITY WHO ARE NOT BEING SERVED BY A COMPETITIVE SUPPLIER. IN CONSIDERING THE APPLICATIONS FOR~~
9 ~~DEFAULT SUPPLIER, THE COMMISSION SHALL CONSIDER THE IMPACT OF HAVING MORE THAN ONE DEFAULT SUPPLIER ON~~
10 ~~THE SMALL CUSTOMERS IN THE AGGREGATE.~~

11 ~~—— (3) The commission shall ensure that the price of electricity charged by the A default supplier OR~~
12 ~~THE PUBLIC UTILITY, IF A DEFAULT SUPPLIER IS NOT CHOSEN OR IS REVOKED PURSUANT TO [SECTION 38], is just and~~
13 ~~reasonable and FAIR AND FULLY RECOVERS ALL COSTS OF PROVIDING DEFAULT SUPPLY SERVICE. THE COMMISSION~~
14 ~~shall consider in designating or revoking default supplier status:~~

15 ~~—— (a) financial integrity;~~
16 ~~—— (b) reliability and source of the supply offered;~~
17 ~~—— (c) customer service provided; and~~
18 ~~—— (d) other factors influencing whether reliable and affordable electricity supply to small customers~~
19 ~~is, or will be, provided.~~

20 ~~—— (4) THE COMMISSION SHALL ENSURE THAT FEDERAL POWER MARKETING ADMINISTRATION POWER OR BENEFITS~~
21 ~~ACQUIRED BY A DEFAULT SUPPLIER ARE DISTRIBUTED AS WIDELY AND EQUITABLY AS POSSIBLE AMONG SMALL~~
22 ~~CUSTOMERS IN A MANNER THAT PROMOTES EFFICIENT DEVELOPMENT AND OPERATION OF THE COMPETITIVE RETAIL~~
23 ~~ELECTRICITY MARKETS.~~

24 ~~—— (4)(5) During the transition period, the A default supplier shall provide a supply product that meets~~
25 ~~the rate moratorium provisions provided in 69-8-211. The default supplier also may offer other supply~~
26 ~~choices to customers that affirmatively opt out of the rate moratorium.~~

27 ~~—— (6) A DEFAULT SUPPLIER HAS THE FOLLOWING ADDITIONAL DUTIES:~~

28 ~~—— (A) IT SHALL EDUCATE CUSTOMERS REGARDING CHOICE.~~

29 ~~—— (B) IT MAY NOT ADVERTISE OR PROMOTE ITS DEFAULT SUPPLIER SERVICE; HOWEVER, IT MAY EDUCATE ITS~~
30 ~~CUSTOMERS ABOUT DEFAULT SUPPLY SERVICE.~~

1 ~~_____ (C) IT MAY NOT DISCOUNT ITS COMMISSION APPROVED RATES TO RETAIN OR GAIN CUSTOMERS.~~

2 ~~_____ (D) IT MAY NOT OBLIGATE CUSTOMERS TO A CONTRACTUAL TERM OF SERVICE.~~

3 ~~_____ (E) IT SHALL PROVIDE INFORMATION TO CUSTOMERS ABOUT ALTERNATIVE COMPETITIVE SUPPLIERS OF ENERGY~~
4 ~~SERVICES.~~

5 ~~_____ (7) (A) A DEFAULT SUPPLIER MAY NOT:~~

6 ~~_____ (I) CONSTRUCT, PURCHASE, TAKE, RECEIVE, LEASE, OR OTHERWISE ACQUIRE OR OWN, HOLD, EQUIP, MAINTAIN,~~
7 ~~OR OPERATE ELECTRIC GENERATING PLANTS OR TRANSMISSION OR DISTRIBUTION LINES OR SYSTEMS, EXCEPT THAT A~~
8 ~~DEFAULT SUPPLIER MAY ENTER INTO TRANSMISSION OR DISTRIBUTION AGREEMENTS FOR THE USE OF CAPACITY ON~~
9 ~~TRANSMISSION AND DISTRIBUTION SYSTEMS;~~

10 ~~_____ (II) PURCHASE ELECTRICITY FOR OR SELL ELECTRICITY TO COMMERCIAL OR INDUSTRIAL ELECTRIC CONSUMERS~~
11 ~~HAVING ACCOUNTS POSSESSING AN AGGREGATED MONTHLY PEAK GREATER THAN 100 KILOWATTS; OR~~

12 ~~_____ (III) OFFER FOR SALE ANY PRODUCTS OTHER THAN ELECTRICITY SUPPLY.~~

13 ~~_____ (B) NOTHING IN SUBSECTION (7) (A) PREVENTS A LOCAL GOVERNMENT UTILITY FROM PROVIDING SUPPLY SERVICE~~
14 ~~TO ITS LOCAL GOVERNMENTAL CUSTOMER ACCOUNTS.~~

15 ~~_____ (5)(8) The commission may promulgate rules necessary to implement this section and [SECTION~~
16 ~~38], INCLUDING RULES GOVERNING THE DEFAULT SUPPLIER APPLICATION PROCESS AND DETERMINING THE LENGTH OF~~
17 ~~DEFAULT SUPPLIER STATUS. THE COMMISSION RULES MUST PROVIDE FOR ALLOWING THE PUBLIC UTILITY AND OTHER~~
18 ~~INTERESTED PERSONS TO PARTICIPATE.~~

20 NEW SECTION. Section 32. Default supplier -- license revocation. The commission may revoke
21 default supplier status for just cause on the commission's own investigation or upon complaint of an
22 affected party, if it finds that the default supplier has violated the terms of default supplier status. Upon
23 revocation, default supplier status reverts to the public utility, unless and until the commission grants new
24 default supplier status to another person. THE PUBLIC UTILITY MUST BE GIVEN SUFFICIENT NOTICE TO ACQUIRE
25 SUPPLY TO SERVE THIS LOAD AND SHALL FULLY RECOVER ITS COSTS IN PROVIDING THIS SERVICE.

27 NEW SECTION. Section 33. Severability. If a part of [this act] is invalid, all valid parts that are
28 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
29 applications, the part remains in effect in all valid applications that are severable from the invalid
30 applications.

1

2 NEW SECTION. Section 34. Saving clause. [This act] does not affect rights and duties that
3 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
4 act].

5

6 NEW SECTION. Section 35. Codification instruction. (1) [Sections 1 through ~~32~~ 28] are intended
7 to be codified as an integral part of Title 35, and the provisions of Title 35 apply to [sections 1 through
8 ~~32~~ 28].

9 (2) [~~Sections 37 and 38~~] are SECTION 32 IS intended to be codified as an integral part of Title 69,

10 chapter 8, and the provisions of Title 69, chapter 8, apply to [~~sections 37 and 38~~] SECTION 32.

11

12 NEW SECTION. Section 36. Effective date. [This act] is effective on passage and approval.

13

- END -

SENATE BILL NO. 406

1
2 INTRODUCED BY S. DOHERTY, E. BERGSAGEL, A. BISHOP, J. BOHLINGER, J. ELLINGSON, D. EWER,
3 L. GROSFIELD, H. HARPER, J. LYNCH, W. MCNUTT, J. QUILICI, F. THOMAS, B. WILSON
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE FORMATION OF BUYING COOPERATIVES
6 TO PURCHASE ELECTRICITY FOR RESIDENTIAL AND SMALL ~~BUSINESS~~ COMMERCIAL CUSTOMERS IN
7 INVESTOR-OWNED DISTRIBUTION UTILITY SERVICE TERRITORIES IN WHICH THOSE CUSTOMERS CAN
8 CHOOSE AN ELECTRICITY SUPPLIER; AUTHORIZING THE PUBLIC SERVICE COMMISSION TO DESIGNATE
9 ~~A~~ ONE OR MORE ~~SUPPLIER~~ SUPPLIERS FOR ELECTRICITY WITHIN AN INVESTOR-OWNED
10 DISTRIBUTION UTILITY'S SERVICE TERRITORY; AMENDING SECTIONS 69-8-103, ~~69-8-203~~, 69-8-201,
11 ~~69-8-210~~, AND 69-8-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
12

**THERE ARE NO CHANGES IN THIS BILL AND
IT WILL NOT BE REPRINTED. PLEASE REFER TO
2ND RD--2ND HOUSE COPY (TAN) FOR COMPLETE TEXT.**



FREE CONFERENCE COMMITTEE

on Senate Bill 406
Report No. 1, April 14, 1999

Page 1 of 3

Mr. President and Mr. Speaker:

We, your Free Conference Committee met and considered **Senate Bill 406** (reference copy -- salmon) and recommend this Free Conference Committee report be adopted.

For the Senate:

Fred Thom
Chair

Bob Bery
Bery

Steve Doherty
Doherty

Dossum
Amendment Coordinator

Karina Skilton
Secretary of Senate

For the House:

Reggie Johnson
Chair Johnson

E. Bergsage
E. Bergsage

David Emmer
Emmer

And, recommend that **Senate Bill 406** (reference copy -- salmon) be amended as follows:

1. Page 3, lines 7, 10, and 14.

Strike: "SECTION 311" in three places

Insert: "69-8-403"

2. Page 21, line 12.

Strike: "utility"

Insert: "services provider"

ADOPT

REJECT

FCCR#1
SB 406

AC SB 406-1

811157FC.srf

3. Page 21, line 16.

Strike: "utility"

Insert: "services provider"

4. Page 22, line 25.

Strike: "[THIS ACT]"

Insert: "[sections 1 through 28] or this chapter"

5. Page 28, line 7.

Strike: "69-8-404"

Insert: "[section 32]"

6. Page 30.

Following: line 18

Insert: "NEW SECTION. Section 32. Default supplier license.

(1) In developing licensing rules for default suppliers, the commission shall promote and facilitate the development of a competitive market for electricity supply.

(2) Default supplier licensing rules must ensure that:

(a) a default supplier may not purchase electricity for or sell electricity to commercial or industrial electric consumers having individual accounts with an average monthly demand in the previous calendar year of 100 kilowatts or more or to new commercial or industrial electric consumers having individual accounts with an estimated monthly demand of 100 kilowatts or more;

(b) a default supplier may not discount its commission-approved rates to retain or gain customers;

(c) a default supplier may not obligate customers to a contractual term or service;

(d) federal power marketing administration power or benefits acquired by a default supplier are distributed as widely and equitably as possible among small customers and in a manner that encourages competition;

(e) a default supplier, except when the default supplier is the distribution services provider, may not construct, purchase, take, receive, or otherwise acquire or own, hold, equip, maintain, or operate electric generating plants or transmission or distribution lines or systems, except that a default supplier may enter into transmission or distribution agreements for the lease or use of capacity on transmission and distribution systems owned by others to supply electricity to its customers in the state;

(f) a default supplier may not offer for sale any products other than electricity supply or provide electricity supply to members or customers other than those residing in the state or sell electricity or otherwise engage in the marketing of electricity on the wholesale market, but may dispose of excess electricity associated with temporary load-energy imbalances.

(3) Except as provided in subsection (2)(e), a default supplier may provide only a single electricity supply service to

all of its small customers. A default supplier may also offer an additional electricity supply service that includes a component of renewable energy.

(4) A default supplier may not offer other supply services unless the default supplier forms a separate entity."

Renumber: subsequent sections

7. Page 30, line 25.

Strike: "IN PROVIDING THIS SERVICE"

Insert: "of reentering the default supplier business"

8. Page 31, line 9.

Strike: "SECTION"

Insert: "Sections"

Following: "32"

Insert: "and 33"

9. Page 31, line 10.

Strike: "SECTION"

Insert: "sections"

Following: "32"

Insert: "and 33"

- END -



FREE CONFERENCE COMMITTEE

on Senate Bill 406
Report No. 2, April 19, 1999

Page 1 of 1

Mr. President and Mr. Speaker:

We, your Free Conference Committee met and considered **Senate Bill 406** (reference copy -- salmon) and recommend this Free Conference Committee report be adopted.

For the Senate:

Fred Thomas
Chair *Thomas*

Mark Berry
Berry

St. Doherty
Doherty

Jane K. Beyle
Amendment Coordinator

Roxana Skelton
Secretary of Senate

For the House:

Regal Johnson
Chair *Johnson*

Borgsaqel
Borgsaqel

Ewer
Ewer

And, recommend that **Senate Bill 406** (reference copy -- salmon) be amended as follows:

1. Page 22, line 24.

Strike: "OR"

Insert: "of"

- END -

ADOPT

REJECT

FCCR#2
SB 406
AC SB 406-2

851010FC.sio



FREE CONFERENCE COMMITTEE

on Senate Bill 406
Report No. 3, April 20, 1999

Page 1 of 3

Mr. President and Mr. Speaker:

We, your Free Conference Committee met and considered **Senate Bill 406** (reference copy -- salmon) and recommend this Free Conference Committee report be adopted.

For the Senate:

Fred Thom
Chair

Delaney

Steve Dierley

J. J. J.
Amendment Coordinator

Rosana Skelton
Secretary of Senate

For the House:

Barry
Chair

Lyne Johnson

Emery

And, recommend that **Senate Bill 406** (reference copy -- salmon) be amended as follows:

1. Page 3, lines 7, 10, and 14.

Strike: "SECTION 311" in three places

Insert: "69-8-403"

2. Page 21, line 12.

Strike: "utility"

Insert: "services provider"

ADOPT

REJECT

FCCR#3
SB 406
AC SB 406-3

861458FC.srf

3. Page 21, line 16.

Strike: "utility"

Insert: "services provider"

4. Page 22, line 24.

Strike: "OR"

Insert: "of"

5. Page 22, line 25.

Strike: "[THIS ACT]"

Insert: "[sections 1 through 28] or this chapter"

6. Page 28, line 7.

Strike: "69-8-404"

Insert: "[section 32]"

7. Page 30.

Following: line 18

Insert: "NEW SECTION. Section 32. Default supplier license.

(1) In developing licensing rules for default suppliers, the commission shall promote and facilitate the development of a competitive market for electricity supply.

(2) Default supplier licensing rules must ensure that:

(a) a default supplier may not purchase electricity for or sell electricity to commercial or industrial electric consumers having individual accounts with an average monthly demand in the previous calendar year of 100 kilowatts or more or to new commercial or industrial electric consumers having individual accounts with an estimated monthly demand of 100 kilowatts or more;

(b) a default supplier may not discount its commission-approved rates to retain or gain customers;

(c) a default supplier may not obligate customers to a contractual term or service;

(d) federal power marketing administration power or benefits acquired by a default supplier are distributed as widely and equitably as possible among small customers and in a manner that encourages competition;

(e) a default supplier, except when the default supplier is the distribution services provider, may not construct, purchase, take, receive, or otherwise acquire or own, hold, equip, maintain, or operate electric generating plants or transmission or distribution lines or systems, except that a default supplier may enter into transmission or distribution agreements for the lease or use of capacity on transmission and distribution systems owned by others to supply electricity to its customers in the state;

(f) a default supplier may not offer for sale any products other than electricity supply or provide electricity supply to members or customers other than those residing in the state or

sell electricity or otherwise engage in the marketing of electricity on the wholesale market, but may dispose of excess electricity associated with temporary load-energy imbalances.

(3) Except as provided in subsection (2)(e), a default supplier may provide only a single electricity supply service to all of its small customers. A default supplier may also offer an additional electricity supply service that includes a component of renewable energy.

(4) A default supplier may not offer other supply services unless the default supplier forms a separate entity."

Renumber: subsequent sections

8. Page 30, line 25.

Strike: "IN PROVIDING THIS SERVICE"

Insert: "of reentering the default supplier business"

9. Page 31, line 9.

Strike: "SECTION"

Insert: "Sections"

Following: "32"

Insert: "and 33"

10. Page 31, line 10.

Strike: "SECTION"

Insert: "sections"

Following: "32"

Insert: "and 33"

- END -

SENATE JOURNAL
EIGHTY-SIXTH LEGISLATIVE DAY - APRIL 20, 1999

Total 49

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Grosfield.

Total 1

REPORTS OF SELECT COMMITTEES

FREE CONFERENCE COMMITTEE

on Senate Bill 406

Report No. 3, April 20, 1999

Mr. President and Mr. Speaker:

We, your **Free Conference Committee** met and considered **Senate Bill 406** (reference copy -- salmon) and recommend this **Free Conference Committee** report be adopted.

And, recommend that **Senate Bill 406** (reference copy -- salmon) be amended as follows:

1. Page 3, lines 7, 10, and 14.

Strike: "SECTION 31" in three places

Insert: "69-8-403"

2. Page 21, line 12.

Strike: "utility"

Insert: "services provider"

3. Page 21, line 16.

Strike: "utility"

Insert: "services provider"

4. Page 22, line 24.

Strike: "OR"

Insert: "of"

5. Page 22, line 25.

Strike: "[THIS ACT]"

Insert: "[sections 1 through 28] or this chapter"

6. Page 28, line 7.

Strike: "69-8-404"

Insert: "[section 32]"

SENATE JOURNAL
EIGHTY-SIXTH LEGISLATIVE DAY - APRIL 20, 1999

7. Page 30.

Following: line 18

Insert: "NEW SECTION. Section 32. Default supplier license. (1) In developing licensing rules for default suppliers, the commission shall promote and facilitate the development of a competitive market for electricity supply.

(2) Default supplier licensing rules must ensure that:

(a) a default supplier may not purchase electricity for or sell electricity to commercial or industrial electric consumers having individual accounts with an average monthly demand in the previous calendar year of 100 kilowatts or more or to new commercial or industrial electric consumers having individual accounts with an estimated monthly demand of 100 kilowatts or more;

(b) a default supplier may not discount its commission- approved rates to retain or gain customers;

(c) a default supplier may not obligate customers to a contractual term or service;

(d) federal power marketing administration power or benefits acquired by a default supplier are distributed as widely and equitably as possible among small customers and in a manner that encourages competition;

(e) a default supplier, except when the default supplier is the distribution services provider, may not construct, purchase, take, receive, or otherwise acquire or own, hold, equip, maintain, or operate electric generating plants or transmission or distribution lines or systems, except that a default supplier may enter into transmission or distribution agreements for the lease or use of capacity on transmission and distribution systems owned by others to supply electricity to its customers in the state;

(f) a default supplier may not offer for sale any products other than electricity supply or provide electricity supply to members or customers other than those residing in the state or sell electricity or otherwise engage in the marketing of electricity on the wholesale market, but may dispose of excess electricity associated with temporary load-energy imbalances.

(3) Except as provided in subsection (2)(e), a default supplier may provide only a single electricity supply service to all of its small customers. A default supplier may also offer an additional electricity supply service that includes a component of renewable energy.

(4) A default supplier may not offer other supply services unless the default supplier forms a separate entity."

Renumber: subsequent sections

8. Page 30, line 25.

Strike: "IN PROVIDING THIS SERVICE"

Insert: "of reentering the default supplier business"

9. Page 31, line 9.

Strike: "SECTION"

Insert: "Sections"

Following: "32"

Insert: "and 33"

10. Page 31, line 10.

Strike: "SECTION"

Insert: "sections"

Following: "32"

Insert: "and 33"

For the Senate:

F. Thomas, Chairman
Berry
Doherty

For the House:

E. Bergsagel, Chairman
Ewer
R. Johnson

SENATE JOURNAL
EIGHTY-SIXTH LEGISLATIVE DAY - APRIL 20, 1999

**SECOND READING OF BILLS
(COMMITTEE OF THE WHOLE)**

Session No. 3

Senator Harp moved the Senate resolve itself into a Committee of the Whole for consideration of business on second reading. Motion carried. Senator J. Lynch in the chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

HB 540 - Free Conference Committee Report No. 1 - Senator J. Devlin moved the Free Conference Committee report to HB 540 be adopted. Motion carried as follows:

Yeas: Beck, Berry, Bohlinger, Christiaens, Cocchiarella, Crismore, DePratu, Devlin, Ekegren, Glaser, Grimes, Hargrove, Harp, Hertel, Holden, Keating, Keenan, Mahlum, McNutt, Mesaros, Miller, Mohl, Sprague, Stang, Swysgood, Taylor, Thomas, Toews, Wells, Mr. President.

Total 30

Nays: Bartlett, Bishop, Cole, Doherty, Eck, Ellingson, Ellis, Franklin, Halligan, Jabs, Jergeson, Lynch, McCarthy, Nelson, Roush, Shea, Tester, Waterman, Wilson.

Total 19

Absent or not voting: None.

Total 0

Excused: Grosfield.

Total 1

SB 205 - House Amendments - Senator W. McNutt moved House amendments to SB 205 be concurred in. Motion carried unanimously.

SB 406 - Free Conference Committee Report No. 3 - Senator F. Thomas moved the Free Conference Committee report number3 to SB 406 be adopted. Motion carried with Senator Toews voting nay.

Senator Harp moved the committee rise, report progress, and beg leave to sit again. Motion carried. Committee arose. Senate resumed. President Crippen in the chair. Chairman J. Lynch moved the Committee of the Whole report be adopted. Report adopted.

MOTIONS

Majority Leader Harp moved that the Senate stand in recess until the hour of 4:50 p.m. Motion carried.

Senate recessed at 4:32 p.m.

Senate reconvened at 5:13 p.m.

Roll Call. All members present. Quorum present.



AN ACT AUTHORIZING THE FORMATION OF BUYING COOPERATIVES TO PURCHASE ELECTRICITY FOR RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS IN INVESTOR-OWNED DISTRIBUTION UTILITY SERVICE TERRITORIES IN WHICH THOSE CUSTOMERS CAN CHOOSE AN ELECTRICITY SUPPLIER; AUTHORIZING THE PUBLIC SERVICE COMMISSION TO DESIGNATE ONE OR MORE DEFAULT SUPPLIERS FOR ELECTRICITY WITHIN AN INVESTOR-OWNED DISTRIBUTION UTILITY'S SERVICE TERRITORY; AMENDING SECTIONS 69-8-103, 69-8-201, AND 69-8-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, residential and small commercial customers of investor-owned distribution utilities in Montana need access to reliable electricity supply at equitable prices; and

WHEREAS, the aggregation of residential and small commercial customers that do not have access to competitive electricity suppliers at equitable prices provides them with market power to secure electricity at the least cost; and

WHEREAS, allowing one or more default suppliers to aggregate residential and small commercial customers to purchase electricity maximizes economies of scale, increases administrative efficiency, and provides maximum benefits to all small electricity customers; and

WHEREAS, wholesale competition in electricity markets may be facilitated by allowing entities to compete for the opportunity to provide electricity supply to those residential and small commercial customers on an aggregated basis; and

WHEREAS, the formation of nonprofit electricity buying cooperatives enhances the chances of securing for small customers the greatest amount of electricity at the least cost from the federal power system; and

WHEREAS, the state of Montana desires that its residents have access to the benefits of competitive retail electricity markets and federal Power Marketing Administration electricity; and

WHEREAS, federal Power Marketing Administration power or benefits should be distributed as widely and equitably as possible among small customers of open-access public utilities in the state of

Montana in a manner that promotes efficient development and operation of the competitive retail electricity markets; and

WHEREAS, the state of Montana benefits by enacting legislation this session that maximizes the chances of an electricity buying cooperative being able to purchase power for small customers from the Bonneville Power Administration at preferential rates for the subscription period that begins in 2001.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [Sections 1 through 28] may be cited as the "Electricity Buying Cooperative Act".

Section 2. Definitions. As used in [sections 1 through 28], unless the context requires otherwise, the following definitions apply:

(1) "Distribution utility" means the electricity distribution portion of a public utility as defined in 69-8-103.

(2) "Residential customer" means a residential customer of a distribution utility.

(3) "Small commercial customer" means, for a distribution utility, individual accounts of a commercial customer with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts.

(4) "Small customer" means a residential customer or small commercial customer of a distribution utility.

Section 3. Jurisdiction of public service commission. The public service commission has jurisdiction to choose and regulate a buying cooperative that obtains a default supplier license, as provided in 69-8-403. If a buying cooperative that has obtained a default supplier license has the opportunity to obtain federal power marketing administration power, the public service commission also has jurisdiction over the purchase and distribution of that power, as provided in 69-8-403.

Section 4. Permissible purpose of incorporation. A buying cooperative may be organized under this chapter only for the purpose of supplying electricity to small customers as a default supplier, pursuant to 69-8-403.

Section 5. Powers of buying cooperative. A buying cooperative may:

- (1) sue and be sued in its corporate name;
- (2) have existence for as long as it serves its purpose;
- (3) adopt a corporate seal and alter the seal at pleasure;
- (4) own, possess, and enjoy as much real and personal property as is necessary for the transaction of its business and sell and dispose of the property;
- (5) borrow money, or otherwise contract indebtedness, and pledge its property, both real and personal, to secure the payment of the borrowed money or contract for debt;
- (6) enter into contracts and other obligations for the purchase and sale of electricity to its members;
- (7) sell or otherwise dispose of electricity on the wholesale market not consumed by its members;
- (8) conduct its business and exercise all of its powers within or outside of this state;
- (9) adopt, amend, and repeal bylaws; and
- (10) except as prohibited in [section 6], do and perform all other acts and things and have and exercise all other powers that may be necessary, convenient, or appropriate to accomplish the purpose for which the buying cooperative is organized.

Section 6. Restrictions on powers of buying cooperative. Notwithstanding any other provision of this chapter, a buying cooperative may not:

- (1) construct, purchase, take, receive, or otherwise acquire or own, hold, equip, maintain, or operate electric generating plants or transmission or distribution lines or systems, except that a buying cooperative may enter into transmission or distribution agreements for the lease or use of capacity on transmission and distribution systems;
- (2) purchase electricity for or sell electricity to commercial or industrial electric consumers having individual accounts with an average monthly demand in the previous calendar year of 100 kilowatts or

more or a new commercial or industrial customer with an estimated average monthly demand of 100 kilowatts or more; or

- (3) offer for sale any products other than electricity supply.

Section 7. Waiver of notice. (1) If [sections 1 through 28] or the buying cooperative's articles of incorporation or bylaws require that notice be given, a person may waive the notice if the waiver is in writing and signed by the person entitled to the notice whether before or after the time fixed for the giving of the notice.

(2) If a person entitled to notice of a meeting attends the meeting, the person's attendance constitutes a waiver of notice of the meeting, except in the case when the person attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

Section 8. Name. (1) The name of each buying cooperative must include the phrase "electricity buying cooperative" and the abbreviation "inc."

(2) The name of a buying cooperative must distinguish it from the name of another corporation organized under the laws authorized to transact business in this state.

(3) The phrase "electricity buying cooperative" may not be used in the name of any corporation organized under the laws of or authorized to transact business in this state, except a buying cooperative transacting business in this state pursuant to [sections 1 through 28].

Section 9. Incorporators. Five or more individuals may organize a buying cooperative, as provided in [sections 1 through 28].

Section 10. Articles of incorporation. (1) The articles of incorporation of a buying cooperative must state in the caption that the articles of incorporation are executed pursuant to [sections 1 through 28], must be signed by each of the incorporators, and must state:

- (a) the name of the cooperative;
- (b) the address of its principal office;

(c) the names and addresses of the incorporators;

(d) the names and addresses of the persons who constitute its first board of trustees; and

(e) any provisions not inconsistent with [sections 1 through 28] considered necessary or advisable for the conduct of its business and affairs.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain:

(a) provisions, not inconsistent with law, eliminating or limiting liability as provided in [sections 1 through 28];

(b) provisions for classifications of members in a buying cooperative; and

(c) provisions for issuance of nonvoting stock.

(3) A buying cooperative's articles of incorporation must be submitted to the secretary of state for filing, as provided in [section 27].

(4) It is not necessary to include in the articles of incorporation of a buying cooperative the purpose for which it is organized or any of the corporate powers vested in a buying cooperative under [sections 1 through 28].

Section 11. Amendment of articles of incorporation. A buying cooperative may amend its articles of incorporation by complying with the following requirements:

(1) The proposed amendment must first be:

(a) approved by the board of trustees and then be submitted to a vote of the members at any annual or special meeting of the membership; or

(b) submitted by a petition bearing not less than 20% of the members' signatures, in accordance with the same procedures as those provided for member initiatives provided in [section 17].

(2) The notice of the meeting on the proposed amendment must be included in the proposed amendment. The proposed amendment, with the changes that the members choose to make to the amendment, is considered to be approved on the affirmative vote of not less than two-thirds of those members voting on the amendment at the meeting.

(3) Upon an approval of the amendment by the members, the articles of amendment must be executed on behalf of the buying cooperative by its president or vice president and its corporate seal must

be affixed to the articles of amendment and attested by its secretary. The articles of amendment must include in the caption that the articles of amendment are executed pursuant to [sections 1 through 28] and must state:

- (a) the name of the buying cooperative;
- (b) the address of its principal office;
- (c) the date of the filing of its articles of incorporation in the office of the secretary of state; and
- (d) the amendment to its articles of incorporation.

(4) The president or vice president executing the articles of amendment shall also make and attach to the articles of amendment an affidavit stating that the provisions of this section were met.

(5) The articles of amendment and the affidavit must be submitted to the secretary of state for filing, as provided in [section 27].

Section 12. Change of principal office without amendment. A buying cooperative may, without amending its articles of incorporation, upon authorization of its board of trustees, change the location of its principal office. The buying cooperative shall file a certificate of change of principal office executed by its president or vice president, under its seal attested by its secretary, with the secretary of state's office. The buying cooperative shall also file a certificate of change of principal office in each county office in which the buying cooperative's articles of incorporation or any prior certificate of change of principal office of the buying cooperative has been filed. The buying cooperative shall pay the change in location of principal office fee prescribed in [section 27]. The buying cooperative shall also, within 30 days after the filing of the certificate of change of principal office in any county office, file certified copies of its articles of incorporation and all article of incorporation amendments if not already on file in the county office.

Section 13. Bylaws. The original bylaws of a buying cooperative must be adopted by its board of trustees. After adoption by the board of trustees, the bylaws may be adopted, amended, or repealed by its members or, except as authorized in a bylaw, by its board of trustees. A bylaw may not prevent the members from reassuring sole power to amend bylaws or prevent members from otherwise adopting, amending, or repealing bylaws. The bylaws must include the rights and duties of members and trustees

and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with [sections 1 through 28] or with the articles of incorporation.

Section 14. Membership. (1) Membership in a buying cooperative is restricted to small customers of a distribution utility.

(2) A member may join a buying cooperative by the methods prescribed in the buying cooperative's bylaws or may be assigned to a buying cooperative by the public service commission, as provided by commission rule.

Section 15. Nonliability of members, trustees, and officers. (1) The private property of the members of a buying cooperative is exempt from execution for the debts of the buying cooperative, and a member may not be liable or responsible for any debts of the buying cooperative.

(2) A trustee or officer of a buying cooperative or acting for a buying cooperative is not personally liable to the buying cooperative or its members for any actions taken or any failure to take any action as a trustee or officer unless:

- (a) the trustee or officer fails to perform the trustee's or officer's responsibilities or duties, including those in compliance with [sections 18 and 19]; and
- (b) the failure to perform constitutes willful misconduct or recklessness.

Section 16. Meetings of members. (1) An annual meeting of the members must be held at a time that must be provided in the bylaws.

(2) Special meetings of the members may be called by the board of trustees, by any three trustees, by not less than 20% of the members, or by the president.

(3) Meetings of members must be held at a place designated in the bylaws. In the absence of a provision in the bylaws that designates a meeting place, all meetings must be held at a place determined by the board of trustees.

(4) Except as otherwise provided, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called must be given to each member, either personally or by mail, not less than 10 or more than 25

days before the date of the meeting.

(5) Five percent of all members present in person or 50 members present in person, whichever is fewer, constitute a quorum for the transaction of business at all meetings of the members, but the bylaws may prescribe the presence of a greater percentage or number of the members for a quorum. If less than a quorum is present at a meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(6) Each member is entitled to one vote on each matter submitted to a vote at a meeting. Voting must be in person but, if the bylaws allow, voting may also be by proxy or by mail, or both or if the bylaws allow, by the method provided in [section 20]. If the bylaws provide for voting by proxy or by mail, the bylaws must also prescribe the conditions under which proxy or mail voting or both are to be exercised. In any event, a person may not vote as a proxy for more than three members at a meeting of the members.

Section 17. Initiative by members -- approval of trustees not required. (1) Notwithstanding any other provision of [sections 1 through 28], there must be submitted to the members of a buying cooperative any proposition embodied in a petition signed by not less than 20% of its members, together with any document submitted with the petition to give the effect to the proposition, either at a special meeting of the members held within 45 days after the presentation of the petition or, if the date of the next annual meeting of members falls within 90 days after the presentation or if the petition specifically requests, at the annual meeting.

(2) The approval of the board of trustees is not required for any proposition or document submitted to the members pursuant to this section and approved by them, but any proposition or document is subject to all other applicable provisions of [sections 1 through 28]. The affidavit or affidavits required to be filed with this proposition or document pursuant to applicable provisions of [sections 1 through 28] must be modified to be in compliance with the provisions of this section.

Section 18. Board of trustees -- number -- qualifications -- removal -- compensation -- joint memberships. (1) The business and affairs of a buying cooperative must be managed by or under the direction of a board of not less than five trustees, each of whom must be a member of the buying

cooperative. The bylaws must prescribe the number of trustees, their qualifications, other than those provided for in [sections 1 through 28], the manner of holding meetings of the board of trustees and of the election of successors to trustees who resign, die, or are otherwise incapable of acting. The bylaws may also provide for the removal of trustees from office and for the election of their successors.

(2) Without approval of the membership, trustees:

(a) may not receive any salaries for their services as trustees, except trustees may receive the same insurance coverage provided to buying cooperative employees; and

(b) except in emergencies, may not be employed by the buying cooperative in a capacity involving compensation.

(3) The bylaws may provide that the board of trustees may establish a fixed sum, including expenses of attendance, if any, to be allowed for:

(a) attendance at each meeting of the board of trustees or any committee of the board of trustees; or

(b) representing the buying cooperative at a meeting or on business whenever representation has been approved by the board.

(4) If two or more persons hold a joint membership in a buying cooperative, one person, but not more than one person, from a joint membership may be elected a trustee.

(5) The policies of the buying cooperative may provide that benefits provided to employees may be extended to trustees.

Section 19. Trustees -- term -- quorum -- powers. (1) The trustees of a buying cooperative named in articles of incorporation shall hold office until the next following annual meeting of the members or until their successors have been elected and qualified. At each annual meeting or, in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect trustees who may serve for 1-, 2-, or 3-year terms. Each trustee shall hold office for the term for which that trustee is elected or until the trustee's successor has been elected and qualified.

(2) A majority of the board of trustees constitutes a quorum.

(3) The board of trustees may exercise all of the powers of a buying cooperative, except those powers that are conferred upon the members by [sections 1 through 28] or by its articles of incorporation

or bylaws.

Section 20. Voting districts. (1) Notwithstanding any other provisions of [sections 1 through 28], the bylaws may provide that the territory or geographic area in which a buying cooperative operates to serve its members, or a class or classes of members, must be divided into two or more voting districts and that in respect to each voting district:

(a) the members or the members of a membership class or classes residing in the voting district shall elect a designated number of trustees;

(b) the members or the members of a membership class or classes residing in the voting district shall elect a designated number of delegates; or

(c) the members or the members of a membership class or classes shall elect both trustees and delegates.

(2) This section does not restrict or prohibit a buying cooperative from using a combination of voting districts based on members or classes of members with a territory or geographical area or voting districts at large based on members or classes of members using one or more kinds of services or products provided by the buying cooperative.

(3) The bylaws must prescribe the manner in which the voting districts and the members or membership classes of those voting districts and the delegates and trustees, if any, elected from those voting districts shall function and the powers of the delegates, which may include the power to elect trustees and adopt, amend, or repeal the bylaws of a buying cooperative as provided in [sections 1 through 28].

(4) A member at a voting district meeting and a delegate at a meeting may not vote by proxy or by mail.

Section 21. Officers. The officers of a buying cooperative consist of a president, vice president, secretary, and treasurer who are elected annually by and from the board of trustees. A person may not continue to hold any of the above offices after that person has ceased to be a trustee. The offices of secretary and of treasurer may be held by the same person. The board of trustees may also elect or appoint other buying cooperative officers, agents, or employees that it considers necessary or advisable

and shall prescribe the powers and duties of those other officers, agents, or employees. An officer may be removed from office and a successor elected in the manner prescribed in the bylaws.

Section 22. Authority to take acknowledgments. A person who is authorized to take acknowledgments under the laws of this state may not be disqualified from taking acknowledgments of instruments executed in favor of a buying cooperative or to which it is a party by reason of being an officer, trustee, director, or member of the buying cooperative.

Section 23. Refunds to members -- retention of unclaimed refunds. (1) Revenue of a buying cooperative for any fiscal year must, unless otherwise determined by a vote of the members, be distributed by the buying cooperative to its members as patronage refunds, prorated in accordance with the patronage of the buying cooperative by the respective members paid for during the fiscal year, whenever the revenue exceeds the amount necessary to:

- (a) defray expenses of the buying cooperative and of the operation and maintenance of its facilities during the fiscal year;
- (b) pay interest and principal obligations of the buying cooperative coming due in the fiscal year;
- (c) finance or provide a reserve for the financing of the construction or acquisition by the buying cooperative of additional facilities to the extent determined by the board of trustees;
- (d) provide a reasonable reserve for working capital; and
- (e) provide a reserve for the payment of indebtedness of the buying cooperative maturing more than 1 year after the date of the incurrence of the indebtedness in an amount not less than the total of the interest and principal payments required to be made during the next fiscal year.

(2) This section may not be construed to prohibit the payment by a buying cooperative of all or any part of its indebtedness prior to the date when the payment becomes due.

(3) A buying cooperative shall, upon the action of the board of trustees, retain redeemed patronage refunds that are allocated to its members and that remain unclaimed for a period of 5 years after the end of the year in which the refunds are given. Unclaimed redeemed patronage refunds retained by the buying cooperative must be used for educational purposes.

Section 24. Disposition or encumbrance of property. (1) Except as provided in subsection (2), or other than as arises relating to the issuance of stock or for any sale, mortgage, lease, transfer, or other disposition or encumbrance of property to any entity owned or controlled by the buying cooperative or in which the buying cooperative holds a majority interest or for any disposition or encumbrance arising from or in connection with the issuance of shares of stock, if any is authorized, a buying cooperative may not sell, mortgage, lease, or otherwise dispose of or encumber all or any substantial portion of its property unless the sale, mortgage, lease, or other disposition or encumbrance is authorized at a duly held meeting of members of the buying cooperative by an affirmative vote of not less than two-thirds of all the members of the buying cooperative and unless the notice of the proposed sale, mortgage, lease, or other disposition or encumbrance is contained in the notice of the meeting.

(2) The board of trustees of a buying cooperative, without authorization by the members of the buying cooperative, has the full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon or the pledging or encumbering of any or all of the property, assets, rights, privileges, licenses, franchises, and permits of the buying cooperative, whether acquired or to be acquired and wherever situated, as well as the revenue and income from the property, assets, rights, privileges, licenses, franchises, and permits of the buying cooperative, all upon the terms and conditions that the board of trustees determines, to secure any indebtedness of the buying cooperative or any entity owned or controlled by the buying cooperative or in which the buying cooperative owns a majority interest to the United States or any instrumentality or agency of the United States or to any other financing sources within the United States.

(3) Before a meeting is held to vote on authorization of disposition of buying cooperative property as provided in subsection (1), the board of trustees shall:

(a) have the property appraised by three appraisers chosen by the board and not associated with the buying cooperative or a proposed buyer of buying cooperative property;

(b) notify all buying cooperative members, at least 90 days in advance, of a meeting to vote on disposition of buying cooperative property. Detailed proposals for disposition of the property must accompany the notice; and

(c) at least 30 days before the meeting, mail to all members any alternative proposal made by buying cooperative members if it has been submitted to the board and signed by 50 or more members.

(4) The vote on property disposition may take place at an annual meeting if the board notifies the members as provided in this section.

Section 25. Dissolution of buying cooperative that has not commenced business. (1) A buying cooperative that has not commenced business may dissolve voluntarily by delivering to the secretary of state articles of dissolution, executed on behalf of the buying cooperative by a majority of the incorporators. The articles of dissolution must state:

- (a) the name of the buying cooperative;
- (b) the address of its principal office;
- (c) the date of its incorporation;
- (d) that the buying cooperative has not commenced business;
- (e) that the amount, if any, actually paid in on account of membership fees, less any part of the amount disbursed for necessary expenses, has been returned to those entitled to money;
- (f) that there are not any unpaid buying cooperative debts; and
- (g) that a majority of the incorporators elect that the buying cooperative be dissolved.

(2) The articles of dissolution must be submitted to the secretary of state for filing, as provided in [sections 1 through 28].

Section 26. Dissolution and winding up of buying cooperative that has commenced business. A buying cooperative that has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

(1) The board of trustees shall first recommend that the buying cooperative be dissolved voluntarily, and after that, the proposition that the buying cooperative be dissolved must be submitted to the members of the buying cooperative at any annual or special meeting. The notice of the annual or special meeting must include the proposition. The proposed voluntary dissolution is considered approved upon the affirmative vote of not less than two-thirds of all of the members of the buying cooperative.

(2) Upon approval of the voluntary dissolution, a certificate of election to dissolve is executed on behalf of the buying cooperative by its president or vice president and its corporate seal must be affixed to the certificate and attested by its secretary or assistant secretary. The certificate must state the:

- (a) name of the buying cooperative;
- (b) address of its principal office;
- (c) names and addresses of its trustees; and

(d) total number of members who voted for and against the voluntary dissolution of the buying cooperative. The president or vice president executing the certificate shall also make and annex to the certificate an affidavit stating that the provisions of this subsection were complied with. The certificate and affidavit must be submitted to the secretary of state for filing as provided in [sections 1 through 28].

(3) Upon the filing of the certificate provided for in subsection (2) and an affidavit with the secretary of state, the buying cooperative shall cease to carry on its business except to the extent necessary for winding up the business of the buying cooperative, but its corporate existence must continue until articles of dissolution have been filed by the secretary of state.

(4) After the filing of the certificate and affidavit with the secretary of state, the board of trustees shall immediately mail a notice of the winding up proceedings to each known creditor and claimant and publish the notice once a week for 2 successive weeks in a newspaper of general circulation in the county in which the principal office of the buying cooperative is located.

(5) The board of trustees has the full power to wind up and settle the affairs of the buying cooperative and shall proceed to collect the debts owing to the buying cooperative, convey and dispose of its property and assets, pay, satisfy, and discharge its debts, obligations, and liabilities, and do all other things required to liquidate its business and affairs, and after paying or adequately providing for the payment of all its debts, obligations, and liabilities, the board of trustees shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each buying cooperative member:

(a) during the period preceding the date of the filing of the certificate that encompasses the longest period of time in effect prior to the buying cooperative dissolution for determination of members who are entitled to the patronage refunds for the capital redemption period; or

(b) if the buying cooperative was not in existence for the period provided for in subsection (5)(a), then during the period of its existence.

(6) When all debts, liabilities, and obligations of the buying cooperative have been paid and discharged or adequate provision has been made in return for all debts, liabilities, and obligations and all

of the remaining property and assets of the buying cooperative are distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution that must be executed on behalf of the buying cooperative by its president or vice president and its corporate seal must be affixed to the articles of dissolution and attested by its secretary. The articles of dissolution must include in the caption that the articles of dissolution are executed pursuant to [sections 1 through 28] and must state:

- (a) the name of the buying cooperative;
- (b) the address of the principal office of the buying cooperative;
- (c) that the buying cooperative has up to this time filed with the secretary of state a certificate of election to dissolve and the date on which the certificate was filed;
- (d) that all debts, obligations, and liabilities of the buying cooperative have been paid and discharged or that adequate provision has been made in return for all debts, obligations, and liabilities;
- (e) that all the remaining property and assets of the buying cooperative have been distributed among the members in accordance with the provisions of this section; and
- (f) that there are not any actions or suits pending against the buying cooperative. The president or vice president executing the articles of dissolution shall also make and annex to the articles of dissolution an affidavit stating that the provisions of this subsection (6) were met. The articles of dissolution and affidavit, accompanied by proof of the publication required in this subsection, must be submitted to the secretary of state for filing as provided in [sections 1 through 28].

Section 27. Incorporation, amendment, and dissolution filings. (1) Articles of incorporation, amendment, or dissolution, when executed and accompanied by an affidavit that may be required by applicable provisions of [sections 1 through 28], must be presented to the secretary of state for filing. If the secretary of state finds that the articles presented conform to the requirements of [sections 1 through 28], the secretary of state shall upon the payment of the fees provided for in 35-18-502, file the articles, and upon the filing, the incorporation, amendment, or dissolution is legally effective.

(2) The secretary of state, immediately upon the filing of any articles pursuant to [sections 1 through 28], shall transmit a certified copy of the filing to the county clerk of the county in which the principal office of each buying cooperative or corporation affected by the incorporation, amendment, or

dissolution is located. The clerk of any county, upon receipt of the certified copy, shall file and index the certified copy in the records of the clerk's office. Failure of the secretary of state or of a clerk of a county to comply with the provisions of this section does not invalidate the articles.

(3) The provisions of this section also apply to certificates of election to dissolve and affidavits of compliance executed pursuant to [section 26].

Section 28. Exemption from taxes. Buying cooperatives transacting business in this state pursuant to [sections 1 through 28] are exempt from all excise and income taxes, other than any applicable fees to fund the Montana consumer counsel and the public service commission as provided in Title 69, chapter 1, parts 2 and 4.

Section 29. Section 69-8-103, MCA, is amended to read:

"69-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers and purchases electric energy and takes title to electric energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electric energy but that does not take title to electric energy.

(5) "Cooperative utility" means:

- (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or
- (b) an existing municipal electric utility as of May 2, 1997.

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of

Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Default supplier" means a distribution services provider or a person that has received a default supplier license from the commission.

~~(7)~~(8) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

~~(8)~~(9) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of electricity to the public.

~~(9)~~(10) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

~~(10)~~(11) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

~~(11)~~(12) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

- (i) distribution;
- (ii) connection;
- (iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

~~(12)~~(13) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

~~(13)~~(14) "Local governing body" means a local board of trustees of a rural electric cooperative.

~~(14)~~(15) "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

~~(15)~~(16) "Nonbypassable rates or charges" means rates or charges approved by the commission imposed on a customer to pay the customer's share of transition costs or universal system benefits program costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

~~(16)~~(17) "Pilot program" means a program using a representative sample of residential and small commercial customers to assist in developing and offering customer choice of electric supply for all residential and commercial customers.

~~(17)~~(18) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

(19) "Small customer" means a residential customer or a small commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts of a public utility distribution services provider that has opened access on its distribution system pursuant to [sections 1 through 28] or this chapter.

~~(18)~~(20) "Transition bondholder" means a holder of transition bonds including trustees, collateral agents, and other entities acting for the benefit of that holder.

~~(19)~~(21) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

~~(20)~~(22) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

~~(21)~~(23) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

~~(22)~~(24) "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

~~(23)~~(25) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002, unless otherwise extended pursuant to this chapter, during which utilities may phase in customer choice of electricity supplier.

~~(24)~~(26) "Transition property" means the property right created by a financing order including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or

assignable pursuant to a financing order is only a contract right.

~~(25)~~(27) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

~~(26)~~(28) "Transmission services provider" means a person controlling or operating transmission facilities.

~~(27)~~(29) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits program costs.

~~(28)~~(30) "Universal system benefits programs" means public purpose programs for:

- (a) cost-effective local energy conservation;
- (b) low-income customer weatherization;
- (c) renewable resource projects and applications, including those that capture unique social and energy system benefits or provide transmission and distribution system benefits;
- (d) research and development programs related to energy conservation and renewables;
- (e) market transformation designed to encourage competitive markets for public purpose programs; and
- (f) low-income energy assistance.

~~(29)~~(31) "Utility" means any public utility or cooperative utility."

Section 30. Section 69-8-201, MCA, is amended to read:

"69-8-201. Public utility -- transition to customer choice -- waiver. (1) A public utility shall, except as provided in this section, adhere to the following deadlines:

(a) On or before July 1, 1998, all customers with individual loads greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts or greater must have the opportunity to choose an electricity supplier.

(b) Subject to subsection (2), and as soon as is administratively feasible but before July 1, 2002, all other public utility customers must have the opportunity to choose an electricity supplier.

(2) (a) Except as provided for in subsection ~~(3)~~ (4), the commission may determine that additional time is necessary for customers identified in subsection (1)(b); however, the implementation of full customer choice may not be delayed beyond July 1, 2004.

(b) A determination by the commission that additional time is necessary for subsection (1)(b) customers must be made at least 60 days in advance of the scheduled date and must be based on one or more of the following considerations:

- (i) implementation would not be administratively feasible;
- (ii) implementation would materially affect the reliability of the electric system; or
- (iii) Montana customers or electricity suppliers would be disadvantaged due to lack of a competitive electricity supply market.

(3) The commission shall designate the public utility or one or more default suppliers to provide regulated default service for those small customers of a public utility that are not being served by a competitive electricity supplier. The transition advisory committee shall review and address the need for continued default supply service and make recommendation to the 57th legislature.

~~(3)~~(4) Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, and 69-8-402, a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, may:

(a) defer compliance with this chapter until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory, except that the public utility shall file a transition plan pursuant to 69-8-202 to provide transition to customer choice on or before July 1, 2002, and must have completed the transition period to customer choice by July 1, 2006; and

(b) petition the commission to delay the public utility's transition plan filing until July 1, 2004.

~~(4)~~(5) Upon a request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of 69-8-104, 69-8-202 through 69-8-204, 69-8-208 through 69-8-211, 69-8-402, and this section."

Section 31. Section 69-8-403, MCA, is amended to read:

"69-8-403. Commission authority -- rulemaking authority. (1) Beginning on the effective date of a commission order regarding a public utility's transition plan, the commission shall regulate the public utility's retail transmission and distribution services within the state of Montana, as provided in this chapter, and may not regulate the price of electricity supply except as electricity supply may be procured as provided in this section:

(a) during the transition period by the one or more default suppliers for those customers not being served by a competitive supplier; or

(b) by the distribution function of a public utility for those customers that have not chosen an electricity supplier or for those customers that have not yet been assigned an electricity supplier are not being served by a competitive electricity supplier as provided by commission rules. During the transition period, those procurements may include a cost-based contract from a supply affiliate or an unregulated division.

~~(2) If the transition period is extended for certain customers because the commission finds that workable competition in the electricity supply market does not exist, then the commission shall continue to regulate the provision of electricity supply by distribution services providers in accordance with 69-8-210.~~

~~(3)~~(2) The commission shall decide if there is workable competition in the electricity supply market by determining whether competition is sufficient to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market share estimates.

~~(4)~~(3) The commission shall license electricity suppliers and enforce licensing provisions pursuant to 69-8-404.

~~(5)~~(4) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

~~(6)~~(5) The commission shall establish just and reasonable rates through established ratemaking principles for public utility distribution and transmission services and shall regulate these services. The commission may approve rates and charges for electricity distribution and transmission services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with this chapter, and on the public utility's transition plan.

~~(7)~~(6) The commission shall certify that a cooperative utility has adopted a transition plan that complies with this chapter. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.

~~(8)~~(7) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

(8) The commission shall license default suppliers and enforce default licensing provisions pursuant to [section 32].

(9) The commission shall promulgate rules for the licensing of default suppliers on or before December 1, 1999.

(10) Until the commission has determined that workable competition has developed for small customers, a default supplier's obligation to serve remains.

~~(9)~~(11) In addition to promulgating rules expressly provided for in this chapter, the commission may promulgate any other rules necessary to carry out the provision of this chapter.

~~(10)~~(12) This chapter does not give the commission the authority to:

(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with this chapter; or

(b) compel any change to a cooperative utility's certification filing made pursuant to this chapter."

Section 32. Default supplier license. (1) In developing licensing rules for default suppliers, the commission shall promote and facilitate the development of a competitive market for electricity supply.

(2) Default supplier licensing rules must ensure that:

(a) a default supplier may not purchase electricity for or sell electricity to commercial or industrial electric consumers having individual accounts with an average monthly demand in the previous calendar year of 100 kilowatts or more or to new commercial or industrial electric consumers having individual accounts with an estimated monthly demand of 100 kilowatts or more;

(b) a default supplier may not discount its commission- approved rates to retain or gain customers;

(c) a default supplier may not obligate customers to a contractual term or service;

(d) federal power marketing administration power or benefits acquired by a default supplier are distributed as widely and equitably as possible among small customers and in a manner that encourages competition;

(e) a default supplier, except when the default supplier is the distribution services provider, may not construct, purchase, take, receive, or otherwise acquire or own, hold, equip, maintain, or operate electric generating plants or transmission or distribution lines or systems, except that a default supplier

may enter into transmission or distribution agreements for the lease or use of capacity on transmission and distribution systems owned by others to supply electricity to its customers in the state;

(f) a default supplier may not offer for sale any products other than electricity supply or provide electricity supply to members or customers other than those residing in the state or sell electricity or otherwise engage in the marketing of electricity on the wholesale market, but may dispose of excess electricity associated with temporary load-energy imbalances.

(3) Except as provided in subsection (2)(e), a default supplier may provide only a single electricity supply service to all of its small customers. A default supplier may also offer an additional electricity supply service that includes a component of renewable energy.

(4) A default supplier may not offer other supply services unless the default supplier forms a separate entity.

Section 33. Default supplier -- license revocation. The commission may revoke default supplier status for just cause on the commission's own investigation or upon complaint of an affected party, if it finds that the default supplier has violated the terms of default supplier status. Upon revocation, default supplier status reverts to the public utility, unless and until the commission grants new default supplier status to another person. The public utility must be given sufficient notice to acquire supply to serve this load and shall fully recover its costs of reentering the default supplier business.

Section 34. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 35. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 36. Codification instruction. (1) [Sections 1 through 28] are intended to be codified as an integral part of Title 35, and the provisions of Title 35 apply to [sections 1 through 28].

(2) [Sections 32 and 33] are intended to be codified as an integral part of Title 69, chapter 8, and

the provisions of Title 69, chapter 8, apply to [sections 32 and 33].

Section 37. Effective date. [This act] is effective on passage and approval.

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